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Gonzalez v. Douglas Trial Transcript of Proceedings, Day 2

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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

3 NOAH GONZÁLEZ; JESÚS) Case No. 4:10-cv-00623-AWT
4 GONZÁLEZ, his father and)
5 next friend, et al.,)
6) Tucson, Arizona
7 Plaintiffs,) June 27, 2017
8 vs.) 9:07 a.m.
9 DIANE DOUGLAS,)
10 Superintendent of Public)
11 Instruction, in her)
12 Official Capacity; et)
13 al.,)
14)
15 Defendants.)
16 _____

17
18 Before the Honorable A. Wallace Tashima

19 Transcript of Proceedings

20 Bench Trial Day 2

21 Proceedings reported and transcript prepared by:

22 A. Tracy Jamieson, RDR, CRR
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 Proceedings reported by stenographic machine shorthand;
 transcript prepared using court reporting software.

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INDEX OF EXAMINATIONS

WITNESSES:	PAGE
JOHN HUPPENTHAL	
Direct Examination By Mr. Reiss (Resumed)	33
Cross-Examination By Ms. Cooper	106

INDEX OF EXHIBITS

No.	Page
118	90
155	118
229	88

1 P R O C E E D I N G S

2 (Proceedings commenced at 9:07 a.m. as follows:)

3 THE COURT: Good morning. All be seated. The first
4 order of business today before we get back to our witness,
5 Mr. Huppenthal, I am going to rule on these, I think the two
6 pending motions, and I don't think it should delay it further
7 because obviously they could affect the further examination of
8 this and other witnesses.

9 So I wasn't going to allow any argument. I think one
10 side or other requested argument, but the two motions pending
11 are the plaintiffs' motion to amend the pretrial order and the
12 defendants' request to take judicial notice. So if you want
13 to, I'll give each side up to, I'd say, what, 10 minutes to
14 argue either or both motions. Either side want to argue, add
15 anything to their papers on this?

16 MR. REISS: Your Honor, with respect to the state's
17 request to take judicial notice, we have no objection.

18 THE COURT: No objection?

19 MR. REISS: No objection.

20 THE COURT: Let me see what my -- okay. Then if it's
21 not objected, the defendants' request to take judicial notice
22 and the documents are listed in the request, and I think they
23 all have to do with documents concerning the Tucson School
24 District, the Board and actions of the Board. Plus, an order
25 from the *Fisher* case, which is pending in this Court, in this

1 very courtroom. So that motion is granted without opposition.

2 What remains is the defendants' request -- excuse
3 me -- the plaintiffs' motion to amend the pretrial order.

4 Anybody want to speak to that?

5 MR. REISS: Mr. Fitzmaurice will do that, with the
6 Court's permission.

7 THE COURT: That's fine.

8 MR. REISS: Thank you, Your Honor.

9 MR. FITZMAURICE: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. FITZMAURICE: So as you noted, there's an
12 outstanding motion for plaintiffs to amend the joint pretrial
13 order, which was submitted several weeks ago. There are two
14 parts to this motion.

15 The first part is that some of the amendments are
16 actually on consent, so the parties have met and conferred, and
17 we've agreed to drop previously contested exhibits. So we're
18 happy to prepare a stipulation to the Court to identify what
19 exact order of exhibits we no longer object to.

20 THE COURT: Are those the ones around the 189 and so
21 forth?

22 MR. FITZMAURICE: Excuse me, Your Honor?

23 THE COURT: I say are they the Exhibits 189 and 190,
24 around there, or are you speaking of something else?

25 MR. FITZMAURICE: No, they're something else, Your

1 Honor. They are -- the second part of the motion, that's what
2 you're going to, Your Honor, is that we -- plaintiffs have
3 added some new exhibits which defendants do not consent to. So
4 I'm more than happy to address that now.

5 Those exhibits essentially we spoke a lot about, about
6 a few of them yesterday. Some of them are legislative
7 materials.

8 THE COURT: You're talking about the material listed
9 in the defendants' request on Pages 2 and 3, right, 1 through
10 8? Those are all, you could say, legislative materials, school
11 board materials.

12 MR. FITZMAURICE: Specifically, Your Honor, I am
13 talking about Plaintiffs' Exhibits 163 to 188, and these
14 essentially are recent contemporary statutes to HB2281 that
15 then Senator Huppenthal voted in favor of, specifically,
16 SB10 --

17 THE COURT: I'm sorry, 163 to what?

18 MR. FITZMAURICE: Plaintiffs' Exhibits 163 to 188.
19 And these exhibits are both the official records of the
20 legislation themselves --

21 THE COURT: These are the ones all relating to
22 legislative bills, right?

23 MR. FITZMAURICE: Yes.

24 THE COURT: To which either Mr. Huppenthal, well,
25 maybe was not the sponsor of, but voted --

1 MR. FITZMAURICE: Voted in favor of, yes. So, Your
2 Honor, you're right. They're both the official versions of the
3 bills themselves and then Senator Huppenthal's voting record.

4 THE COURT: Now, what's the showing of -- you know,
5 you have to make, under the rule, to -- never mind the
6 substance of what's in the bills and so forth, what's your
7 excuse for getting at these so late?

8 MR. FITZMAURICE: Well, Your Honor, these are --

9 THE COURT: One week before trial.

10 MR. FITZMAURICE: Well, Your Honor, these are
11 legislative materials, so these are judicial --

12 THE COURT: They've been available, I assume, publicly
13 ever since the legislative sessions, right?

14 MR. FITZMAURICE: Precisely, which is why, Your Honor,
15 they're judicially noticeable under Rule 201D at any time in
16 the proceedings.

17 THE COURT: Well, wait a minute. You want to amend
18 the pretrial order, right?

19 MR. FITZMAURICE: Yes, Your Honor.

20 THE COURT: So the first thing is should you be able
21 to amend the pretrial order?

22 MR. FITZMAURICE: Well, Your Honor --

23 THE COURT: What do you have to show to amend the
24 pretrial order? What's the showing required?

25 MR. FITZMAURICE: Well, Your Honor, we have to show

1 that there's no manifest injustice.

2 THE COURT: Beyond that.

3 MR. FITZMAURICE: Excuse me, Your Honor?

4 THE COURT: Beyond that.

5 MR. FITZMAURICE: I mean, beyond that --

6 THE COURT: Don't you have to show some kind of cause
7 for your delay?

8 MR. FITZMAURICE: I mean --

9 THE COURT: You don't think you have to?

10 MR. FITZMAURICE: I mean, for judicial notice, Your
11 Honor, the rule says --

12 THE COURT: No, but this is a motion to amend the
13 pretrial order, isn't it?

14 MR. FITZMAURICE: Or, in the alternative, to take
15 judicial notice.

16 THE COURT: Well, let's talk about the motion to amend
17 the pretrial order first.

18 MR. FITZMAURICE: Okay. Well, let's talk with that
19 for a second. That's rule 16E, which, as Your Honor said, to
20 prevent manifest injustice as both sides agree on the legal
21 standard here.

22 The legal standard is to focus on whether any
23 prejudice would be to the defendants. Plaintiffs would submit
24 that there is absolutely no prejudice to adding to the exhibit
25 list legislation proposed and enacted by the State of Arizona

1 where -- in a case where the State of Arizona are the
2 defendants. So that's no prejudice.

3 The second one is the ability to cure the prejudice.
4 There is no prejudice to cure. And to the extent that there is
5 any prejudice, these are legislation that we will examine and
6 discuss with Mr. Huppenthal in a moment, which the defendants
7 are free to then reexamine Mr. Huppenthal on.

8 The third factor is the impact on the orderly and
9 efficient conduct at trial. That's why we're trying to get it
10 done ahead of trial, Your Honor, so we're not wasting the
11 Court's time with objections during trial.

12 And the fourth is any bad -- bad faith. Your Honor, I
13 don't think anybody has even accused plaintiffs of having bad
14 faith here. These are -- these are --

15 THE COURT: It's not a matter of bad faith. My
16 question is why do you wait to the week before trial to bring
17 it up?

18 MR. FITZMAURICE: It's a good question, Your Honor.

19 THE COURT: This case has been pending for, what,
20 eight years? A lot of these bills go back to 2005. Right?

21 MR. FITZMAURICE: Yes, sir.

22 THE COURT: Well, why do you wait to a week before
23 trial to bring it up?

24 MR. FITZMAURICE: Well --

25 THE COURT: What's your excuse for that? To me,

1 that's undue delay. And, you know, you have to show me some
2 extraordinary cause or some kind of cause for the delay.
3 Otherwise, you're not going to -- you know, your motion is not
4 going to see the light of day.

5 MR. FITZMAURICE: Well, Your Honor, these are bills
6 that we discussed and were the subject of Dr. Pitti's report,
7 Dr. Pitti's deposition. So, yes --

8 THE COURT: Which means you knew about it a long time
9 ago.

10 MR. FITZMAURICE: So we're adding them now, in advance
11 of trial, and there's no showing of prejudice.

12 THE COURT: Well, let's find out. Let me have the
13 defendants' position. I'll give you a chance for rebuttal.

14 Get up here to the lectern, would you, please?

15 MS. COOPER: Plaintiffs have shown neither good cause
16 nor manifest injustice. They have no reason that they didn't
17 disclose this information earlier.

18 It looks like a back-door attempt to bolster their
19 expert report because, as Your Honor pointed out, much of this
20 legislation was mentioned in their expert report and therefore
21 known to plaintiffs.

22 There is prejudice to the defendants.

23 This motion was filed on June 21st. It pertains to a
24 witness who was called to testify at 3:00 p.m. on June 26th.
25 It concerns a substantial number of new exhibits that are being

1 introduced for the purpose of demonstrating that he acted with
2 racist motives. It's a very serious allegation, and he should
3 have been given ample time to address it.

4 Furthermore, Mr. Huppenthal is, as you heard
5 yesterday, a man with a long career in the legislature. 18
6 years. Plaintiffs want to pick out several pieces of
7 legislation which they say are -- which are only relevant to
8 them if Your Honor believes that they are anti-Mexican-American
9 or anti-immigrant. Again, that's a very serious allegation to
10 make.

11 THE COURT: I don't think it's based on the premise of
12 what I believe, it's based on the premise that this will help
13 their case to demonstrate Mr. Huppenthal's animus. Right?

14 MS. COOPER: Yes. They believe that -- first, though,
15 one has to accept the premise that the legislation that they're
16 discussing is anti-immigrant or anti-Mexican-American, because
17 if one does not accept that premise, then it's not relevant at
18 all, because it has nothing to do with education.

19 They're making a very serious charge with respect to
20 the motives of the legislators that enacted the legislation or
21 that raised it.

22 THE COURT: That's not a reason not to admit it, you
23 know, because it's a serious charge. Otherwise, you could
24 never admit any document that makes a serious charge, right?

25 MS. COOPER: It's not a reason to allow them to

1 introduce --

2 THE COURT: No. But whether it makes a serious charge
3 or not has nothing to do with whether or not the pretrial order
4 should be amended. Does it?

5 MS. COOPER: Well, I think that it goes to the
6 prejudice. All right. If this were one piece of
7 legislation --

8 THE COURT: No. No. No. No. No. No. Prejudice
9 goes to surprise, you know --

10 MS. COOPER: Pardon?

11 THE COURT: Prejudice goes to things like surprise,
12 you know, no ability to prepare to respond, things like that.
13 You know, a loss of opposing documents, something like that.
14 But prejudice doesn't go to how -- how outrageous the proffered
15 evidence is.

16 MS. COOPER: Dr. Pitti mentioned this legislation in
17 his report, but had not at the time done any work to tie
18 Superintendent Huppenthal or Superintendent Horne to that.

19 THE COURT: That's when you cross-examine or when
20 someone examines him. It has nothing to do with whether these
21 are admissible in terms of examining Mr. Huppenthal.

22 You're wandering all over the place. Who cares how
23 outrageous it is for purposes of amending the pretrial order,
24 how serious the charges are? That has nothing to do with
25 whether or not the pretrial order can be amended.

1 So get to the point. I mean, why is it prejudicial to
2 the defendants?

3 MS. COOPER: This evidence wasn't tied in any way to
4 Superintendent Huppenthal at the time that it was --

5 THE COURT: I know that. That's why we're discussing
6 it. Why is it prejudicial to bring it forth now?

7 MS. COOPER: Because defendants were unable to
8 properly prepare to meet the evidence because it was introduced
9 very late in the process.

10 THE COURT: What are you saying? You need more time
11 to prepare?

12 MS. COOPER: Yes, we would need more time.

13 THE COURT: How much more time do you need?

14 MS. COOPER: A couple of hours.

15 THE COURT: So if I say, okay, I'm going to admit this
16 on the basis that, one, plaintiffs cannot examine
17 Mr. Huppenthal on this subject at this time, but they can call
18 him back later to examine him on it, would that cure your
19 prejudice?

20 MS. COOPER: That would cure the prejudice. It would
21 not cure the problem with the lack of relevance.

22 THE COURT: Well, that's a different subject.

23 MS. COOPER: Yes.

24 THE COURT: All right. So you're saying you have
25 prejudice, but prejudice can be cured, right?

1 MS. COOPER: Yes, that prejudice can be cured.

2 THE COURT: What's your other basis for opposing this
3 besides prejudice?

4 MS. COOPER: That it's not relevant.

5 THE COURT: Not relevant.

6 MS. COOPER: The historical background of the decision
7 is clearly relevant. It's one of the Arlington Heights
8 factors. But the historical background of the decision has to
9 be legislation in a related subject area. None of this has
10 anything to do with education.

11 Also, it's not shown -- plaintiffs are merely
12 asserting that the legislation is anti-immigrant. Legislation
13 is passed, as Your Honor knows, for a multitude of reasons.
14 And, in fact, discerning legislative intent is an extremely
15 difficult task.

16 Some of the legislation that they assert is -- has
17 been passed with discriminatory intent, Courts have found that
18 that is not the case. SB1070, which was only partially struck
19 down, faced an equal protection challenge which the Court
20 denied. The Court granted summary judgment in front of the
21 state on the equal protection challenge to SB1070.

22 THE COURT: All right. Okay. Anything else?

23 MR. FITZMAURICE: Yes, Your Honor, very briefly.

24 THE COURT: No. Wait a minute. I am speaking to
25 Ms. Cooper.

1 MS. COOPER: No, Your Honor.

2 THE COURT: All right. Thank you.

3 All right. Mr. Fitzmaurice, get back up to the
4 lectern, please.

5 MR. FITZMAURICE: Yes, sir.

6 THE COURT: Okay. Anything further from the
7 plaintiffs on the motion to amend the pretrial order?

8 MR. FITZMAURICE: Yes, Your Honor. Just for the sake
9 of clarity, SB1070 isn't the only piece of legislation we'd
10 like to discuss. We would also like to discuss
11 Proposition 100, which was ruled unconstitutional on equal
12 protection grounds by an en banc panel of the Ninth Circuit.
13 So this isn't a fishing expedition here, Your Honor.

14 THE COURT: What is that? Which legislation was that?

15 MR. FITZMAURICE: Your Honor, that was a proposed
16 amendment to the Arizona Constitution --

17 THE COURT: Was that the official English one?

18 MR. FITZMAURICE: No. That was to deny bail, Your
19 Honor, to immigrants.

20 THE COURT: Yeah. I just wanted to know what you were
21 talking about. Go ahead.

22 MR. FITZMAURICE: So, Your Honor, these are highly
23 targeted pieces of legislation which we believe Senator
24 Huppenthal voted in favor of, and, if for no other reason, we
25 also want judicial notice of these materials under Rule 201,

1 which we can bring at any time.

2 And, frankly, pieces of legislation are frequently the
3 subject of judicial notice. Even in this very case, in the
4 Ninth Circuit, the Ninth Circuit took judicial notice of pieces
5 of legislation. So we respectfully request the Court to do so
6 here. Also in our motion --

7 THE COURT: Does that mean you're abandoning your
8 motion to amend the pretrial order?

9 MR. FITZMAURICE: Yes, Your Honor. Your Honor, we're
10 here to convenience the Court. Whichever route the Court would
11 like to take, we're happy to facilitate.

12 THE COURT: All right. I take that as an affirmative.
13 You're abandoning your motion. You're giving up your motion to
14 amend the pretrial order, is that right?

15 MR. FITZMAURICE: Yes, Your Honor. We'd like -- yes.

16 THE COURT: So your sole motion now is a motion for
17 judicial notice of these same documents?

18 MR. FITZMAURICE: Your Honor, there is one part of our
19 motion to amend the pretrial order that cannot be taken
20 judicial notice of, and, Your Honor, that is the blog post with
21 Mr. Huppenthal.

22 Plaintiffs are not even going to suggest that that can
23 be the subject of judicial notice. These are blog posts that
24 plaintiffs have requested from defendants, let's see, from 2015
25 maybe. We've requested for these blog posts in request for

1 production. We've requested for them in interrogatories.
2 We've asked about them in depositions. Even in
3 Mr. Huppenthal's subpoena to testify this week. We inserted a
4 request that he bring with him blog posts.

5 And at every instance, the defendant said no. They
6 said they were either irrelevant, which we frankly can't fathom
7 how blog posts about his personal feelings towards
8 Mexican-Americans, Mexican-American culture, English language.

9 In fact, these were blog posts that were specifically
10 relevant to the MAS program. These were blog posts where he
11 not only refers to his own actions while blogging under a
12 pseudonym, referring to himself in the third person, but he
13 also calls out some of our witnesses by name and discusses them
14 in his blog posts.

15 So relevance, Your Honor, cannot be disputed.

16 By the way, there's no outstanding motion to quash the
17 subpoena, so this is still a live issue.

18 THE COURT: Quash what subpoena?

19 MR. FITZMAURICE: Well, Your Honor, the subpoena for
20 Mr. Huppenthal to come testify today had a request that he
21 bring these blog posts. These blog posts --

22 THE COURT: You mean his appearance today?

23 MR. FITZMAURICE: His appearance today, yes. These
24 are blog posts that we've been asking for over and over again,
25 and the defendants have said, since they're publicly available,

1 they don't need to produce them.

2 But that's not the standard, Your Honor. The standard
3 is that publicly available information should still be produced
4 if it's properly requested in discovery, and we submit that
5 this was properly requested.

6 THE COURT: Well, it could be a ground for a
7 protective order, too, to say, well, you know, they're just
8 trying to get me to do their research.

9 MR. FITZMAURICE: They never moved for protective
10 order, Your Honor.

11 THE COURT: They don't have to because you haven't
12 moved to enforce it.

13 MR. FITZMAURICE: Well, Your Honor, to convenience the
14 Court, what we did with was, faced with two years of
15 stonewalling, we did our investigation, and we recently
16 uncovered a treasure trove of these blog comments. We found
17 hundreds.

18 THE COURT: Why do you say "recently"? Some of these
19 blog posts go back quite a ways, don't they?

20 MR. FITZMAURICE: We recently -- our research recently
21 uncovered hundreds of these blog posts, hundreds of these blog
22 posts that the defendants have --

23 THE COURT: Again, why did you wait so long to do your
24 research?

25 MR. FITZMAURICE: Your Honor, as of two weeks ago, we

1 included a request in the subpoena for him to come testify.
2 We've been asking and asking and asking, and we've never got
3 them.

4 THE COURT: And you never -- you never learned your
5 lesson from the -- you never learned your lesson from the
6 refusal to produce, huh?

7 MR. FITZMAURICE: Sorry, Your Honor?

8 THE COURT: I say you never learned the lesson from
9 the defense refusal to produce?

10 MR. FITZMAURICE: No, Your Honor, we didn't learn our
11 lesson. We kept going. We were tenacious.

12 But the bottom line is we have a lot of blog posts
13 here. Some of them we've already discussed with them. And, by
14 the way, we all know this, these are blog posts that he has
15 admitted to posting. These are pseudonyms that he has used.
16 He had a press conference. He tearfully apologized. These are
17 blog posts that we think are highly relevant, and these are
18 blog posts that we respectfully request the Court to allow us
19 to amend the pretrial order so we can add and ask.

20 THE COURT: All right. I've heard enough. Thank you
21 very much.

22 Do you want to say something else, Ms. Cooper?

23 MS. COOPER: May I, please, Your Honor?

24 THE COURT: Well, you've got two minutes.

25 MS. COOPER: With respect to the past bills,

1 Mr. Huppenthal was a prolific legislator, over 18 years, many
2 pieces of legislation. I misspoke when I said it would just
3 take just a few hours for him to be up to speed on those.

4 The legislative history with respect to that, the
5 reasons that he supported or sponsored bills may even, in fact,
6 be lost to history because it happened so long ago and because
7 he was so active as a legislator.

8 THE COURT: Well, then, he hasn't been prejudiced,
9 because there's no way he can prepare if it's all lost, right?

10 MS. COOPER: Well, if they'd raised it a few years
11 ago, perhaps he would have had a better memory with respect to
12 those issues. With the passage of time, our memories do fade.

13 With respect to the blog posts, it's correct that
14 plaintiffs raised this issue in late 2015, and if they were
15 concerned with the State's answer at that point, they had many
16 possibilities available to them. They could have brought a
17 motion to compel. They're not correctly stating the standard.
18 We are obligated to produce what's under our custody, care, and
19 control.

20 Information on the internet, as we all know, is not within the
21 custody or control or the care of the state. They said they
22 were tenacious. Tenacious would have been bringing a motion to
23 compel when they didn't get the answer that they wanted.
24 And with respect to the subpoena, we objected. It's their
25 obligation to ask now.

1 THE COURT: All right.

2 MR. REISS: If I might make something easier, we will
3 stipulate with respect to the legislation --

4 THE COURT: You can't argue this motion.

5 MR. REISS: I was making an offer to the Court along
6 your lines, which is simply to agree to not question
7 Mr. Huppenthal about the legislation until after any re --

8 THE COURT: No. Look, you're speaking to the motion.
9 All right? Another comment like that and I'm going to hold you
10 in contempt. This is about the third time I've warned you
11 about not following the Court's orders.

12 MR. REISS: Sorry, Your Honor.

13 THE COURT: Well, just don't let it happen again. You
14 delegated the argument of this motion to your partner,
15 associate, something like that, and you can't come up and be a
16 sandbagger. All right?

17 MR. REISS: Yes, Your Honor.

18 THE COURT: All right. Here's my ruling on the -- all
19 that remains now is the motion for judicial notice of certain
20 documents. Well, no, no, I think Mr. Fitzmaurice is correct,
21 that although he's given up his motion to amend the pretrial
22 order, he still, I think, has to persist in that with respect
23 to the material pertaining to the blog post by Mr. Huppenthal,
24 because there's no way those are going to get into judicial
25 notice.

1 All right. So here is my ruling. Sit down. I'm not
2 asking for argument.

3 Here's my ruling on the motion, all right?

4 One: On the motion to amend the final pretrial order,
5 there's been no showing of good cause or manifest injustice
6 with respect to the Huppenthal blog post. I think plaintiffs
7 have had as much opportunity to research and investigate and
8 try to retrieve those blog posts as had the defendant.
9 Remember, Mr. Huppenthal is not a party any longer.

10 So the defendants have said, and I think this is
11 correct, they do not have care, custody, or control of those
12 blog posts, and they're equally accessible to the plaintiffs,
13 and so I don't think the defendants have, in this case, the
14 obligation to do the plaintiffs' research and to, you know,
15 find those blog posts by wherever it is, using some, you know,
16 specifically tailored algorithm or something. But anyway,
17 there is no showing either of good cause, you know, to ask
18 something like this the week before trial when the case has
19 been pending eight years. You know, it's ridiculous.

20 So I deny the motion to amend the pretrial order
21 because of no showing of good cause or manifest injustice.

22 Was there something else that -- oh, the exhibits that
23 Mr. Fitzmaurice has said the parties have stipulated to on how
24 to handle certain exhibits, I think you should file a written
25 stipulation to confirm that oral stipulation so it's on the

1 record.

2 What other -- let's see.

3 All right. The major portion of this request for
4 judicial notice are bills and documents pertaining, you know,
5 to, I'll call it, the journey of a bill through a legislative
6 process. And there are about, as I understand it now, 12 or 13
7 of these bills that the plaintiffs have uncovered through
8 Mr. Huppenthal's career that, one, he either was the author or
9 sponsor of, or, two, he voted in favor of.

10 I was thinking, I don't know the answer to this, but
11 this is something to be thought about, too. I think there's
12 something in the Constitution that applies only to Congress,
13 but, maybe, you know, many other states have a similar position
14 as that: For good reason a legislator can't be questioned on
15 his or her vote on anything. I think, isn't there a provision
16 in the U.S. Constitution? But I wouldn't be surprised if the
17 states had a similar provision in their constitution.

18 But whether it's there or not, the thought behind that
19 process is this: I think there are a number of reasons why
20 legislators cast any vote. Most of it, you know, is largely
21 political, but that's not to say "politics" is a dirty word.
22 Politics is what makes the machinery of government run. And
23 there could be a lot of reasons why a legislator -- for
24 instance, one of the -- I think the subject of one of the bills
25 here is -- and I don't think Mr. Huppenthal is an author or

1 sponsor, but voted in favor, is to -- I don't know the exact
2 wording, but in effect it's to make English the official
3 language of Arizona, something like that.

4 Well, you know, maybe it does -- you can make an argument that
5 it does, you know, demonstrate racial animus against
6 Mexican-Americans because, you know, everybody knows
7 Mexican-Americans do a lot of their home and schoolwork,
8 communication, in Spanish, some other language. So it's
9 possible it's aimed with the racial animus.

10 On the other hand, there is a good body of political and
11 academic thought that, well, a language, a common language is a
12 unifying factor and an important cultural factor in bringing
13 the country together, so everybody should speak the same
14 language. I'm not sure that classifies as a racial animus
15 against any group.

16 What I'm getting at is while plaintiffs may have a case in
17 saying Mr. Huppenthal showed he was anti-Mexican because he
18 voted for official English, there are other reasons why a
19 legislature could vote for a bill like that. And, to be fair,
20 we would have to, for instance, permit, if the state wanted to,
21 to call an expert on why you should have a unifying language in
22 any country to rebut the showing of the plaintiffs that, well,
23 voting for an English language bill is anti-Mexican.

24 There are countries where the lack of a common language has
25 been a problem in this world because people don't speak the

1 same language. Not as bad as, you know, people not being the
2 same religion, but the same kind of problem.

3 So I don't think -- it's so tenuous, it's so attenuated that
4 this is a showing of racial animus, but that I think, you know,
5 all of the sideshows it would produce far outweigh any
6 relevance it has to the issues in this case.

7 And, as I say, a vote of a legislator on any bill I think can
8 always be explained by a lot of other reasons. I am not going
9 to get into mini trials on all these bills about why

10 Mr. Huppenthal voted for any bill. None of these bills have
11 anything to do with education except a couple possibly, but
12 Mr. Huppenthal, again, I think, was not the sponsor of those
13 bills, although he voted in favor of them.

14 Now, he was a sponsor of a couple of the bills on this
15 list. I think being a sponsor could be considered to be
16 different from merely voting for it. But the bills on which he
17 was the sponsorship have nothing to do with education.

18 I think one had something to do with law enforcement, for
19 instance. Well, again, there are lots of reasons why anybody
20 would take the position on any proposed legislation having to
21 do with law enforcement. I mean, everybody knows that.

22 Different people have different views on how law enforcement
23 should operate.

24 Again, it might be possible to infer a racial animus from
25 the sponsorship of a bill like that, but there are lots of

1 other motives or reasons why a legislature would introduce the
2 bill on any subject.

3 So I'm not going to get into all this byproduct of
4 sideshows and mini trials on all these issues. I just don't
5 think it's a fair ground to question Mr. Huppenthal's motives
6 as to the actions he took on the bill at issue here while he
7 was superintendent of public instruction.

8 So, for that reason, I just think all this evidence about
9 the bills and the legislative actions are just -- you know, you
10 could say they're relevant, but barely so. And the wasted time
11 and the sideshows generated by getting into this area I think
12 far outweigh any usefulness or relevance of this kind of
13 evidence.

14 So I deny this motion for judicial notice.

15 Now, that has to do with all the legislative material.
16 Isn't there another class -- on the blog post, I think I went
17 into that. That was part of the motion to amend the final
18 pretrial order. I've already denied that. I am trying to
19 think if there are any other substantial -- let's see.

20 MR. QUINN: Your Honor, there is one more, I believe,
21 and that relates to the government web page regarding the --

22 THE COURT: About the replication?

23 MR. QUINN: Regarding the ethnic breakdown of the
24 Paulo Freire --

25 THE COURT: About the replication application, I'll

1 call it? Is that the one?

2 MR. FITZMAURICE: Yes.

3 MR. QUINN: Yes, Your Honor.

4 THE COURT: To me, that's a very close question, you
5 know. As I understand it, this is the factual background: The
6 Paulo Freire School filed an application to open another
7 branch, sister school, related school, a second Paulo Freire
8 School. And I guess because it's a charter school, it has to
9 get permission from the state, something like that, and the
10 state requires an application.

11 So Paulo Freire filed this -- what I think in this
12 case has been called the replication application, something
13 like that. And, as I understand it, the Department of
14 Education posted that application on its website, which to me
15 infers that, I suppose as a public service, every time an
16 application like this comes in, the Department of Education
17 posts it on the website just for the convenience of the public,
18 so people can see it.

19 Now, the question is whether, in doing that, they
20 adopted, you know, as sort of a government document, almost
21 like a sponsor. As I understand it, if they don't, then, you
22 see, plaintiffs run into a hearsay problem.

23 In other words, it's like saying, well, here, I have
24 Paulo Freire's application here, and you say, see, it says
25 right in there what the ethnic makeup of the school is. But

1 whoever wrote that report is not testifying that that's a
2 reliable basis. I have a copy.

3 So I don't know what the answer to that is in this
4 kind of situation. The Government publishes a lot of things.
5 You're through with your argument on this motion, right?

6 MS. COOPER: Right.

7 THE COURT: I said, "Anything more to say?" and you
8 said no. All right? So I'm ruling on the motion now.

9 MS. COOPER: All right.

10 THE COURT: All right. It's hard to say when the
11 Government, in effect, accepts and files away papers that the
12 public sends in, whether that makes the Government document
13 that gets by the hearsay rule. I don't know the answer to
14 that. The answer is maybe.

15 I think, can I take judicial notice of it? I
16 can take judicial notice of the fact, I suppose, that
17 there is an application residing in the server of the
18 Department of Education, I suppose. But is that the same
19 as taking judicial notice that the facts or the figures
20 represented in the application are true? I don't know.

21 So I guess at this point I am not going to deny
22 the motion on this application. I am not going to deny
23 the motion for judicial notice. I may still take
24 judicial notice, but I really don't know what the answer
25 is yet. I'll have to think about that some more, but at

1 this point I am not denying it. Okay?

2 So, I think, if you get the witness -- when are
3 you going to get the witness you're going to ask about
4 this? Do you know about when?

5 MR. REISS: Your Honor, I think Mr. Huppenthal
6 testified yesterday that he actually went online and looked at
7 the Paulo Freire website, so I am going to ask him about that.

8 THE COURT: Oh, okay. So you want to ask him about
9 it. All right. So you can ask him about it --

10 MR. REISS: That's a different exhibit.

11 THE COURT: -- but if you do, then anything about
12 this -- any testimony about this application is going to be
13 potentially subject to being stricken after I rule on this part
14 of the motion. So you can examine him on that basis if you
15 want to, all right, but that's the best I can do on that. I
16 haven't had too much help on whether this is, one, even a
17 public document, or, two, the kind of public document that is
18 subject to judicial notice.

19 You know, the closest analogy that comes to mind is
20 you know, under the federal rules of evidence, in speaking
21 about public documents specifically exclude police reports,
22 although, you know, the Government documents are just loaded
23 with police reports. The reason is they mostly report what
24 other people say, and it's hearsay. And the same is true here.
25 All that the Department of Education is doing is saying, we've

1 got this application from the Paulo Freire School. They're not
2 saying it's true or not true. All right.

3 So on that basis -- I don't know the answer, so on
4 that basis, I have to delay a final ruling on this. If anybody
5 wants to file a memo on this issue, that's fine, you can do it,
6 but you don't have to.

7 So I've ruled definitively on everything except on
8 this replication application, and that remains pending.
9 Okay. So that takes care of all the motions, right?

10 MR. REISS: Yes, Your Honor.

11 THE COURT: So we're ready to get back to our witness,
12 who is not in the room.

13 MR. REISS: Yes, Your Honor.

14 MS. COOPER: He just went to the --

15 MR. REISS: For the scheduling, Your Honor, I just
16 want to alert the Court to scheduling, because I think both
17 sides have been making good efforts to be quite efficient.

18 THE COURT: Good.

19 MR. REISS: I want to alert you to the schedule.
20 Because it looks like we actually have a day, on Friday, where
21 we're free, or hopefully free.

22 Just a preview for the Court. Mr. Huppenthal will be
23 examined today, and then the state will do their examination,
24 and then we anticipate that one of the plaintiffs will testify
25 after Mr. Huppenthal, and that should pretty much take up the

1 day.

2 Tomorrow we have Mr. Anderson, who is a state witness;
3 the second plaintiff, and then Mr. Arce. We think that should
4 take up, pretty much, Wednesday. And on Thursday we have
5 Mr. Cabrera, who the Court, I believe, is acquainted with. His
6 testimony has been submitted, as the Court knows --

7 THE COURT: Right.

8 MR. REISS: -- in affidavit form. So it's really
9 cross, and any recross, and that --

10 THE COURT: And redirect?

11 MR. REISS: And redirect, if any. And that really
12 exhausts the witnesses that the plaintiffs have who are
13 available for this week.

14 Mr. Horne was not available this week. Our other two
15 experts, Dr. Valenzuela and Dr. Pitti, were not available this
16 week. And the other state witness that we were going to call,
17 Ms. Morley, is not available this week.

18 THE COURT: Well, wait a minute. All you have left in
19 your case are expert witnesses?

20 MR. REISS: No, no, no, Your Honor. Beyond this week
21 we would have Mr. Horne, who is not available this week,
22 obviously quite an important witness, and Ms. Morley.

23 THE COURT: Are you saying you have nobody lined up
24 for Friday then possibly?

25 MR. REISS: If we're all efficient, we may not have

1 anyone. Again, it depends on how these exams go. But we may
2 not need Friday.

3 THE COURT: Right. Let me ask Mr. Ellman. Do you
4 have somebody, some defense witness, you can plug in? Or
5 Ms. Cooper? Whoever it is.

6 MS. COOPER: No, we do not, Your Honor. We only
7 learned of this possibility at the very end of last week, and
8 we did not think that we would have to begin our own case
9 before they had rested.

10 THE COURT: Well, do you want me to pick a witness for
11 you? Who is on your witness list?

12 MS. COOPER: I'd have to check the availability
13 calendar as well.

14 THE COURT: Okay. I want you both to work. I just
15 don't think we should waste Friday. I mean, it's not as if the
16 case is going to end, it means it's going to push everything
17 over to the next week, right?

18 MR. REISS: No, Your Honor.

19 THE COURT: And so I appreciate you bringing it up,
20 but I think you should both work on seeing what you can do,
21 either side. I don't care if it's a defense witness out of
22 order or somebody else from the plaintiffs. But do something
23 to get us, you know, at least a half a day on Friday. All
24 right? Something like that.

25 MR. REISS: Yes, Your Honor.

1 THE COURT: So what is today, Tuesday?

2 MR. REISS: It is, Your Honor.

3 THE COURT: We'll discuss it tomorrow again. Okay?

4 See what you can do in the meantime. All right. I appreciate
5 that.

6 MR. REISS: Thank you, Your Honor.

7 THE COURT: Are we ready for the witness now?

8 MR. REISS: I believe so.

9 THE COURT: Okay. Mr. Huppenthal, would you please
10 resume the witness stand, please.

11 DIRECT EXAMINATION

12 BY MR. REISS:

13 Q. Good morning, Mr. Huppenthal.

14 A. Good morning.

15 Q. If I can, Mr. Huppenthal, before proceeding with my next
16 topic, I just want to ask a couple of questions related to some
17 things we discussed yesterday.

18 I had asked a couple of questions about your campaign for
19 superintendent of public education in Arizona. You ran as a
20 Republican, right?

21 A. Yes.

22 Q. And you won as a Republican?

23 A. Yes.

24 Q. Going back to your visit at Curtis Acosta's classroom and
25 you observed the Che Guevara poster, did you know on whose

1 request that poster was placed in the classroom?

2 A. No.

3 Q. Did you ever ask about how the poster got in the classroom?

4 A. No.

5 Q. And I believe you testified yesterday that you actually did

6 go on-site with respect to the Paulo Freire schools, right?

7 You looked at their website, right?

8 A. Yes. I spent some time taking a look at the Paulo Freire

9 Charter School and trying to see if there were any public

10 issues related to the school.

11 MR. REISS: Your Honor, one housekeeping thing, just
12 to make sure. And I had discussed this with Ms. Cooper. On
13 the stipulated exhibits -- and I had also spoken with your
14 courtroom clerk -- on the exhibits that have been stipulated by
15 both the plaintiffs and defendants, I'm not formally moving
16 every time to admit those exhibits. I assume that I don't have
17 to do that, or should I?

18 THE COURT: You could treat them as admitted because
19 both sides have agreed they can be admitted.

20 MR. REISS: Okay, Your Honor.

21 THE COURT: But technically they haven't been
22 admitted, but you can treat them as admitted. But you don't
23 have to, you know -- and then when we get to the end of the
24 trial, I'll give you a chance to all go through the exhibit
25 list and make sure whatever you want is admitted.

1 You can treat them as admitted --

2 MR. REISS: Thank you, Your Honor.

3 THE COURT: -- the stipulated exhibits, you know, when
4 you use them to examine a witness.

5 MR. REISS: Thank you, Your Honor.

6 If we could call up Exhibit 126, Jorge.

7 BY MR. REISS:

8 Q. I'm showing you --

9 MR. REISS: If it's more convenient. I can hand the
10 witness, Your Honor, a printout of the exhibit. This has not
11 been admitted, but he did testify he did look at this website.
12 If it's more convenient for the witness, I can give him a hard
13 copy rather than have him page through it on the scene.

14 THE COURT: I think it would be more convenient, then
15 he can have his choice, whichever way he wants to do it.

16 BY MR. REISS:

17 Q. Mr. Huppenthal, have you had a chance to look through
18 Plaintiffs' Exhibit 126?

19 A. A little bit.

20 Q. Is that the website that you visited?

21 A. I don't have enough recollection. I would assume it is,
22 but I don't -- I don't have a specific recollection of what I
23 observed when I went out there. I didn't --

24 Q. Do you have any reason to think it's not the website you
25 looked at for the Paulo Freire School?

1 A. No. Although I don't know when this was pulled, and these
2 things can change dramatically, so I don't know that this would
3 be a representation of what it was back then. Websites can
4 really change abruptly.

5 Q. Fair enough. Does this refresh your recollection of the
6 contents of the Paulo Freire School website?

7 A. Not only of the Paulo Freire website, but also I took the
8 time to read his books, more than once, so.

9 MR. REISS: Your Honor, I would move for the admission
10 of this exhibit.

11 MS. COOPER: We object, Your Honor. There's no
12 evidence that Mr. Huppenthal recalls this exhibit or this was,
13 in fact --

14 THE COURT: At this point the objection is sustained.
15 There's no foundation.

16 MR. REISS: Well, Your Honor, except I think he said
17 he went to the website, looked at the website, and there was no
18 reason to think this isn't the website.

19 THE COURT: He said he doesn't know, and websites
20 change all the time over here, just the same as the one I saw.
21 I don't know, he said. There's no foundation.

22 BY MR. REISS:

23 Q. Does this document refresh your recollection,
24 Mr. Huppenthal, that the pedagogy at the Paulo Freire
25 website -- the pedagogy at the Paulo Freire School was

1 discussed on the website?

2 MS. COOPER: Objection, Your Honor. He's testifying
3 as to what's in the document.

4 MR. REISS: I'm asking if it refreshes his
5 recollection, Your Honor.

6 THE COURT: Right.

7 A. I don't recall. I just remember going to the website. I
8 don't remember. I don't have any specific memories of the
9 website at all.

10 I was more interested as if there were any public
11 controversies, anything that was flowing out of the school, if
12 anybody was exhibiting any concerns about what was going on in
13 the school, and I couldn't pick up anything like that.

14 BY MR. REISS:

15 Q. Let's, if we can, Mr. Huppenthal, move on. We've discussed
16 the Cambium report. And then on June 15th, 2011, you issued a
17 finding, despite the Cambium report, that the MAS program was
18 in violation of 15-112, right?

19 A. I would take exception to "despite the Cambium report."
20 The Cambium report was part of the foundation of my finding.

21 Q. Okay. That's fine. So you credited the Cambium report,
22 right?

23 A. Excuse me?

24 Q. You credited the Cambium report.

25 A. I don't know that I credited it. It was part of the data

1 that we looked at as we came to our finding.

2 Q. Let's look at Plaintiffs' Exhibit 90.

3 MR. REISS: Which, Your Honor, that's stipulated into
4 evidence. Thank you, Your Honor.

5 And I believe it's the page with Bates -- I think it's
6 the tenth page, Jorge. It begins with Bates Number 690.
7 That's it.

8 BY MR. REISS:

9 Q. Now, Mr. Huppenthal, this is your June 15th, 2011 finding
10 that the MAS program was in violation of 15-112, right?

11 A. Yes.

12 Q. And you note, very first paragraph in the summary, you note
13 that on January 1st, 2011, pursuant to Arizona Revised Statutes
14 15-112(B), then Superintendent of Public Instruction Tom Horne
15 issued a finding of violation by Tucson Unified School District
16 Mexican-American Studies, et cetera, et cetera. Right?

17 So you note that Mr. Horne had issued that finding on
18 January 1st, right?

19 A. Yes.

20 Q. And you knew that was the very first day that the statute
21 was supposedly in effect, right?

22 A. I believe so.

23 Q. All right. And that was -- June 15th was exactly one month
24 after the Cambium report was issued on May 15th, right?

25 A. I don't have any specific knowledge right now about those

1 dates, but I would assume that to be true.

2 Q. And if we drop down, further down the page, we're looking
3 at Violation of 15-112(A)(2), and towards the bottom of that
4 paragraph, starting the sentence "however" there, and you note
5 that the limited materials the auditors reviewed and materials
6 submitted to ADE contained content promoting resentment towards
7 a race or class of people, which are clear violations of
8 (A)(2). Our finding is based on the limited curriculum and
9 materials reviewed at TUSD and additional materials gathered
10 independently of the conducted classroom observations.

11 And then you give some examples.

12 So your finding a violation on June 15th, 2011 was based
13 solely upon review of materials, right?

14 A. Well, you have the materials that came through in the
15 Cambium report, and you had the additional materials that were
16 gathered independently of the conducted classroom observations.
17 So I don't know that it would be solely on the materials, but I
18 think you could say it was primarily on the materials.

19 Q. It wasn't based on classroom visits, was it?

20 A. In a paradoxical way, it was. In my observation, upon
21 reading the Cambium report, is that people don't misbehave when
22 they're being observed. And so you could compare the -- you
23 could compare the additional materials gathered outside of the
24 Cambium report with the behaviors you were seeing in the
25 Cambium report to know -- to see this phenomenon.

1 So the Cambium report ended up not being an audit. It's
2 more proper to think of it as an inspection, and when people
3 are being inspected, their behavior changes.

4 And so that was my observation about the Cambium report.
5 It was revealing in a paradoxical way, looking at the
6 additional classroom materials and seeing what was going on
7 when people weren't in the room inspecting, and what kind of
8 behaviors they were doing when people were in the classroom.

9 Q. Let me make sure that I understand what you're saying. The
10 Cambium auditors who actually visited the classroom found no
11 misuse of materials, right? Right?

12 A. I believe that -- you know, I don't know if the word is
13 "no," but I think, by and large, there was -- you know, when
14 they went into the classroom to observe, that the teachers were
15 not doing the same kind of teaching that they were when people
16 weren't in the room observing, and that was the key observation
17 about the Cambium report.

18 Q. So your reasoning is there was nothing objectionable going
19 on in the classrooms while the auditors were there, right,
20 while the Cambium auditors were there, right?

21 A. Yes.

22 Q. So you --

23 A. I came to think of them not as auditors but as inspectors.
24 But that's a key thing to understand about an audit. An audit
25 is a random sample of the universe that represents the

1 universe. An inspection is something else. And that's key to
2 understanding the nature of our findings and why we thought
3 this through the way we did.

4 Q. Again, Mr. Huppenthal, I don't want to be discourteous or
5 interrupt you, but you've got to answer my questions.

6 A. Okay.

7 Q. So whatever you're calling the Cambium people, "auditors,"
8 whatever, they did not observe any misuse of the materials in
9 the classroom that would violate 15-112, right?

10 A. I believe that's true.

11 Q. Right?

12 A. Although I'm not sure. I'd have to go back and review the
13 report again. I am not sure that's a hundred percent.

14 Q. To your knowledge, they didn't find any such misuse, right?

15 A. Right.

16 Q. And you infer -- as I understand your testimony, you infer
17 from the fact that they didn't find misuse that there must have
18 been misuse, because, obviously, the teachers were behaving
19 when the observers were there. Is that your testimony?

20 A. No.

21 MS. COOPER: Objection. Misstates prior testimony.

22 THE COURT: The objection is overruled. He's answered
23 the question. He said no.

24 A. No. The key is the additional materials that were gathered
25 independently, and there were -- there was loads of those

1 additional materials. So it wasn't a small body of evidence
2 independent of the Cambium inspection.

3 BY MR. REISS:

4 Q. Again, Mr. Huppenthal, it was the materials, right, that
5 were the basis for your finding a violation, the "materials," a
6 word you used several times in this finding, right?

7 A. Yes.

8 Q. Well, more importantly --

9 A. More importantly than that --

10 Q. There's no question pending. Mr. Huppenthal, there's no
11 question --

12 A. I need to --

13 Q. Your lawyers can ask you to explain or expand on any answer
14 when they examine you. I have --

15 THE COURT: Have you finished answering his question,
16 his earlier question?

17 THE WITNESS: I don't believe that I have.

18 More importantly than that, I turned this project over
19 to two people with decades of impeccable service doing public
20 policy, Elliott Hibbs and Kathy Hrabluk. And it was their
21 analysis of the materials, their analysis of the Cambium
22 report, and their recommendation to me that was the foundation
23 for my decisions.

24 It wasn't my own analysis of all of these papers. I
25 did a fair amount of reading on my own, but I was busy doing a

1 lot of things. They were focusing on this endeavor. So it was
2 really Elliott Hibbs and Kathy Hrabluk's recommendation to me
3 that was the foundation, not really the materials, per se.

4 These were my perceptions of what was going on as I
5 was gathering information to them, "how are you going about
6 making your decision?" but mostly I was relying on their
7 decades of impeccable service.

8 BY MR. REISS:

9 Q. And the only thing that Mr. Hibbs looked at, and the only
10 thing that Ms. Hrabluk looked at, were materials, right? They
11 didn't visit a single classroom, did they?

12 MS. COOPER: Objection. Argumentative. Foundation.

13 THE COURT: The objection's overruled.

14 A. I don't -- I don't know all of the activities that they
15 engaged in. I can --

16 Q. To your knowledge --

17 A. -- only speculate as to whether they visited classrooms.

18 Q. To your knowledge, did they visit a classroom?

19 A. I don't know. I don't believe that they did, but -- I
20 don't know. You'll have to ask them.

21 Q. In fact, Mr. Huppenthal, you, yourself, as you've just
22 testified, examined a lot of these materials, right?

23 A. Some. I mean, it was -- primarily I delegated this to two
24 people, three people -- John Stollar, too -- who had decades of
25 really highly non-partisan public service in a lot of realms,

1 and they made a recommendation to me. And it was their
2 analysis of all the things, all their discussions with -- going
3 on that were incorporated into their recommendation to me, from
4 what I could tell.

5 Q. And you, yourself, examined a good portion of the
6 materials, right?

7 A. I did some reading to try and, you know, see -- so that I
8 could -- any time you get a recommendation made to you, you
9 want to delve into it a little bit yourself, but primarily I
10 was relying on their professional judgment on this situation.

11 Q. And when you examined these materials, you only found about
12 10 or 20 things that were objectionable, right?

13 MS. COOPER: Objection. Misstates prior testimony.

14 THE COURT: Objection's overruled. You may answer.

15 A. I don't recall as to the number.

16 Q. In fact, Mr. Huppenthal, you said that there was a
17 significant portion of stuff that was acceptable, right?

18 A. Oh, absolutely. Absolutely. You know, my observation in
19 public policy is people always fight to the death over the dime
20 when they can reach down and pick up the 90 cents, you know.

21 So, yeah, all they needed to do -- they needed to get in
22 there, they needed to get this curriculum cleaned up, get it to
23 the school board, open it up to the public, and make sure the
24 public can be proud of what was going on in those classrooms.

25 It didn't appear to me to be brain surgery, what needed to

1 be done. It just -- for some reason. The system was locking
2 up, and we offered, as a department, to be an agent of
3 assistance in helping them do that; but for a variety of
4 reasons, we couldn't get there.

5 Q. And going back to my question, Mr. Huppenthal, so only a
6 small portion of these materials you found objectionable,
7 right?

8 A. I would disagree with the word "small" portion. I think
9 the problem that you had is that you had some really egregious
10 examples in there that just had to be dealt with, that, if you
11 observed this as a public school leader, a public school
12 administrator, you say, this is not acceptable and we've got to
13 clean this up.

14 Q. But there was a significant portion of the materials that
15 were acceptable, right?

16 A. Yes.

17 Q. Okay. And you had no idea whether what was being used in
18 the classroom were those significant portion materials or
19 whether they were using that small number of materials that you
20 found objectionable. You had no idea what was actually being
21 used in the classroom, right?

22 A. I would disagree with the adjective "small number." When
23 you have egregious examples of unacceptable conduct that's
24 not -- you can't describe it as "small," it's got to be dealt
25 with. And so I don't mean to quibble about it, but it's not a

1 small issue, it was the crux of the issue.

2 Q. Let's not quibble. So whether it's small or whatever
3 number, neither you nor anyone on your staff had any firsthand
4 knowledge about whether those materials were being used in the
5 classroom or how those materials were being used in the
6 classroom, if in fact they were used, right? Right?

7 A. I would just -- I would disagree. No, I wouldn't say
8 that's true.

9 Q. What firsthand knowledge did they have about whether those
10 materials were being used or how they were being used?

11 A. The materials that I observed were materials directly from
12 interactions between teachers and students. Those, in a sense,
13 were direct observations of what was going on in the classroom.

14 Q. Observations of what was going on in the classroom?

15 A. They were direct -- the materials, the materials which had
16 been collected were examples of direct interactions between
17 teachers and students in classrooms.

18 Q. But they were just the materials, right? Right?

19 A. I would guess they were the materials.

20 Q. Now, you found that the MAS program -- if I could direct
21 your attention to the next page, Bates ending in 691, this is
22 of your January 15th finding. It's the next page, Jorge.
23 That's it. Thank you.

24 You see at the very top, Mr. Huppenthal, it says,
25 "Violation Section 115(A)(3)." Now, that was the provision

1 that was subsequently stricken as unconstitutional, but it was
2 in effect at this time.

3 You note, in addition to the curriculum, looking at the
4 very top of that paragraph: "In addition to the reviewed
5 curriculum materials." You see that?

6 In addition to the reviewed curriculum materials, the
7 Department's website clearly indicates the program is primarily
8 designed for pupils of a particular ethnic race.

9 Okay. That was the MAS website, right?

10 MS. COOPER: Objection. This portion of the statute
11 has been struck down as unconstitutional, so this testimony is
12 irrelevant.

13 MR. REISS: It wasn't unconstitutional at the time,
14 Your Honor.

15 THE COURT: The objection is overruled.

16 MR. REISS: Thank you, Your Honor.

17 THE WITNESS: The question again?

18 MR. REISS: Could you read back the question. I
19 apologize.

20 (Previous question read by the reporter.)

21 BY MR. REISS:

22 Q. Right? That's the question.

23 A. I would guess so, yes.

24 Q. Okay. And you never looked at the website for the
25 African-American Studies program to determine if it had a

1 similar representation, did you?

2 A. I believe I saw at some point an analysis of the different
3 websites.

4 Q. Do you recall which website? Was it the African-American
5 Studies website or the Asian?

6 A. I think I saw an analysis of all three.

7 Q. And do you recall whether that analysis noted that the
8 other two websites had similar representations about what their
9 ethnic studies programs -- who their ethnic studies programs
10 were designed for?

11 A. I don't -- I don't recall.

12 Q. Now, if you can drop down a little bit further on that
13 page, Mr. Huppenthal. It's the paragraph under subheading E.
14 It says: Additional statutory and regulatory violations. Do
15 you see that? If you look at Point 1, it says: ARS Section
16 15-341. Do you see that? And it says: Arizona Revised
17 Statutes, Title 15, Article 3 delineates the powers and duties
18 of school district governing boards. A.R.S. Section 15-341
19 lists the general powers and duties of such boards.

20 Subsection 2 requires governing boards to exclude from
21 schools all books, publications, papers, or audiovisual
22 materials of a sectarian, partisan, or denominational
23 character.

24 Do you see that?

25 A. Yes.

1 Q. And you cite 15-341 as an additional reason for terminating
2 the MAS program, right? It says right there: Additional
3 statutory and regulatory violations, right?

4 A. I'm not citing them to terminate it. I am citing it as a
5 part of a recommendation that they go through and review the
6 whole program and adopt a curriculum and make sure what's going
7 on in those classes has been reviewed by the school board, and
8 so go through a process of cleaning it up.

9 Q. Okay. And Section 15-341 was already on the books, was it
10 not, when 15-112 was enacted?

11 A. I believe so.

12 Q. Right. And 15-341 says that the schools, public schools,
13 that governing boards -- the governing boards of public schools
14 are required to exclude from schools all books, publications,
15 papers or audiovisual materials of a sectarian, partisan, or
16 denominational character, right? That statute was already in
17 effect when 15-112 was enacted, right?

18 MS. COOPER: Objection. Calls for a legal conclusion
19 as to the authority --

20 THE COURT: Overruled. You may answer.

21 A. Yes. Even as I'm looking at this right now, I don't know
22 that I focussed on this to any extent at all at the time. But
23 as I'm looking at it right now, I'm going, like, is this really
24 Constitutional, to require them to exclude all these different
25 kinds of materials?

1 I mean, in the last year we put in place Bible studies
2 standards. I mean, really, just about any publication should
3 be allowed to be in a school, but it's how you use it that is
4 the key. If you're going to go in and study the Bible, you've
5 got to make sure you're not proselytizing, you have to make
6 sure it's literature study. These are the fine issues as it
7 related to Mexican-American studies.

8 BY MR. REISS:

9 Q. But questions about its constitutionality notwithstanding,
10 15-341 was in effect, right?

11 A. Yes.

12 Q. Okay. And under your analysis of the materials that
13 justified your decision to terminate the MAS program, those
14 materials could have been removed from the schools by the
15 school districts under Section 15-341, could they not?

16 MS. COOPER: Objection. Calls for a legal conclusion.

17 THE COURT: Overruled. You may answer.

18 A. Yes. And I would once again state that we had three
19 top-notch educators, public leaders: Elliott Hibbs, Kathy
20 Hrabluk, and John Stollar, who was extremely non-partisan. And
21 I turned this over to them for them to take a look at this
22 whole situation.

23 Basically, these were people with a stellar record of being
24 able to deal with difficult public policy decisions and handle
25 them. And so they went out, they did a variety of activities,

1 and then they came back and they made a recommendation to me.

2 So that, to me, is what you do when you're in leadership.
3 You bring in good people, you hire good people, and you task
4 them to -- you know, these were all A players. And when you
5 have A players go out and deal with the situation, you don't
6 have to second guess them.

7 BY MR. REISS:

8 Q. I think, Mr. Huppenthal, you've made the point several
9 times that you relied on your staff. But the fact of the
10 matter is, isn't it, Mr. Huppenthal, that there was a statute
11 already on the books that would enable the removal of any
12 materials -- any materials of a partisan nature from the
13 schools. Right? That statute was in effect, valid, and
14 prohibited the use of partisan materials. Right?

15 MS. COOPER: Objection. Asked and answered.

16 THE COURT: Overruled.

17 A. You know, I'd have to think it all back through. I would
18 say I guess, but it's an analysis I'm doing now. I don't
19 recall doing this analysis at the time.

20 BY MR. REISS:

21 Q. And the only reason that you needed 15-112 was that 15-341
22 wouldn't have allowed you to completely terminate the MAS
23 program, right?

24 MS. COOPER: Objection. Misstates 15-112.

25 THE COURT: The objection's overruled. You may

1 answer.

2 A. No, because I had absolutely intent of terminating
3 Mexican-American Studies. In the press release that we
4 reviewed yesterday, we made a strong declaration as an agency
5 that we stood ready to assist in the cleanup process, the
6 review of curriculum, the development of curriculum, the
7 development of lesson plans that would be reviewed by the
8 Tucson Unified School District board and the resumption.

9 I had no expectation that we would terminate
10 Mexican-American Studies. Specifically within the statute, it
11 allowed a cleanup, and I felt that by setting aside the Horne
12 finding, it would give them not only that entire semester to do
13 that cleanup, but also the summer, so they could be ready to go
14 in the fall.

15 Q. And it's your testimony you had no intention to terminate
16 the MAS program? Is that your testimony?

17 A. Yes.

18 Q. Let's look at the next page, let's look at the very bottom:
19 As a result of the above findings, it is hereby ordered that
20 the TUSD board has 60 days to bring the Mexican-American
21 Studies program into compliance with A.R.S. 15-112. Failure to
22 do so shall result in the withholding of 10 percent of state
23 funds.

24 That was your order, right?

25 A. Yes.

1 Q. And you knew, did you not -- by the way, 15-112 provided
2 that if there was a violation, the superintendent could order
3 the withholding of "up to" 10 percent of state funds, right?
4 Right?

5 A. I don't recall that exact phrase, but if you say that's
6 it --

7 Q. Yeah, I'll represent that that's what the statute says. It
8 didn't require you to withhold the maximum amount of state
9 funds, 10 percent, did it?

10 A. I don't recall specifically right now.

11 Q. But you ordered the withholding of 10 percent of state
12 funds unless the program was brought into compliance, right?

13 A. Yes.

14 Q. And you knew that the withholding of that 10 percent of
15 state funds was the death knell of the Mexican-American
16 Studies, right?

17 A. Oh, absolutely not.

18 Q. Not?

19 A. Absolutely not. If you recall the timing, they had already
20 had an entire semester to begin to work on the curriculum,
21 lesson plan issues that were of public concern, and so they
22 were going to have essentially the whole -- the summer period
23 to -- I never anticipated that the program would collapse.

24 Q. But you knew that the program could not survive if 10
25 percent of the state funds was withheld, right?

1 A. No, I didn't know that. The law specifically says you've
2 got to -- if they are brought into compliance, and it didn't
3 seem to me that it would be that difficult to bring the program
4 into compliance.

5 Q. All right. You recall, I'm sure not fondly, our
6 deposition, right? I deposed you, right, in this case?
7 Impeachment 8.

8 MR. REISS: This was from his deposition, Your Honor.

9 (Video playing.)

10 BY MR. REISS:

11 Q. So, Mr. Huppenthal, as you testified in your deposition,
12 the imposition of that 10 percent sanction brought crushing
13 force on the school district, and they would have no choice
14 because it was all their liquidity, right? Right?

15 A. I don't want you to play the recording over again, but the
16 key phrase is "as I look at it now." But I'm not looking at it
17 retrospectively when I made this. At the time, I fully
18 anticipated that they would be able to easily heal the program.
19 And when we set aside the Horne finding and announced that we
20 were doing our own investigation, that -- I felt that alarm
21 bells were going off inside Tucson Unified, okay, let's get
22 this cleaned up and make sure everything is copacetic.

23 Get your curriculum all written out so that the
24 public can inspect it and the people that were raging about it
25 could come in and review it. They're members of the public,

1 taxpayers of the Tucson Unified School District, so they had
2 that whole semester. And then at the time of my finding they
3 still had the summer period.

4 So the answer is no. Looking at it retrospectively,
5 they just simply couldn't do what was necessary internally to
6 get it cleaned up and to say, look, we believe we're in
7 compliance, and move forward.

8 That would have -- under the terms of the law itself,
9 that would have taken care of the issue and required us to do
10 another review similar to the reviews that are going on right
11 now as we speak in the Tucson Unified School District.

12 Q. But you could have imposed a sanction lower than 10 percent
13 if you just wanted to encourage them, right? You could have
14 imposed 1 percent, 2 percent, 3 percent. You didn't have to
15 impose the 10 percent maximum death knell penalty, right?

16 A. I presume so, yes.

17 Q. Now, I'm not going to go at length, because I don't want to
18 waste the Court's time or patience with all of the materials
19 that were cited. But I do want --

20 Did you personally review the materials that were cited by
21 your staff as potentially -- as showing violations of 15-112?
22 Did you review any of those materials?

23 A. To some extent. I recall a large box full of materials,
24 and I recall leafing through that. They were page marked and I
25 went through the materials. I wanted to have -- as I say,

1 again, I turned over to Mr. Hibbs, Ms. Hrabluk and Mr. Stollar
2 the task, but wanted to familiarize myself with it generally,
3 even though I had delegated to them the task of taking care of
4 the situation.

5 Q. Okay. So if we could look at Defense Exhibit 557.

6 And I believe, Mr. Huppenthal, these were some of the
7 materials. The title of these pages is Support Finding of
8 Violation of A.R.S. Section 15-112 (A) (2). Right?

9 You cite a number -- there are a number of works cited in
10 these papers.

11 One example, it's Page 6 of this, Jorge. Right there.

12 You see Critical Race Theory, an Introduction by Richard
13 Delgado. And there's a quote there:

14 Minorities who achieve high socio-economic success still
15 may suffer severe psychological impairment due to racism
16 despite their socio-economic success. In other words, no
17 matter if you're wealthy, an economic opportunity has been made
18 available to you, you will still blame race for your troubles,
19 and you may, in fact, be mentally ill.

20 Do you see that? That's a quote that's attributed to
21 Critical Race Theory by your staff, right?

22 A. If you're properly representing it, yes.

23 Q. I'm just reading what your staff put on here.

24 A. Okay.

25 Q. Did you yourself ever examine the book, Critical Race

1 Theory, to make sure that quote was actually in the book?

2 A. I got a pile of books. I went through and read all of
3 Paulo Freire's books. I don't know if that was one of the
4 books. I spent probably about a month and a half reading it,
5 going through a lot of different materials. I don't recall
6 that book specifically, but it was a pile of reading.

7 Q. So you don't recall finding that passage in Critical Race
8 Theory?

9 A. I don't, but I also don't -- you know, I don't.

10 Q. Did anyone on your staff ever inform you that that passage
11 does not appear at all in the book Critical Race Theory?

12 A. No, they did not inform me of that. I don't know
13 specifically.

14 Q. Let's look at just one other one. The next one down
15 actually, Jorge, on the previous page.

16 500 Years of Chicano History in Pictures. There is a quote
17 there. Again, this is justifying -- using the materials to
18 justify a violation of (A)(2). And the quote that's selected
19 is: Since then Raza resistance has never died, and that is the
20 message of this book, dot, dot, dot. We saw that the enemy
21 wasn't simply the gringo, but a system that has dictated how
22 U.S. society should be organized. Capitalismo, imperialism,
23 socialism, dot, dot, dot, racism.

24 Now, Mr. Huppenthal, you're a very well educated man and
25 very well read. What do those dot, dot, dots mean to you?

1 A. It means that the remainder of the sentence -- it's taken
2 out without the remainder of the sentence.

3 Q. Right.

4 A. Or a piece of the sentence, that there's a piece of the
5 sentence missing.

6 Q. A piece of the sentence, or maybe even more of the text
7 that's being omitted, right?

8 A. It could be, yes.

9 Q. So it's a selective use of the text in the book, right?

10 A. You know, I'd have to go back and -- it is selective, but
11 you don't know how -- the nature of that selectiveness unless
12 you go back and analyze the whole text.

13 Q. Right. So here's one, just briefly, one portion of what
14 was omitted from that text. It goes -- then it says: Since
15 then, Raza resistance has never died, and that is the message
16 of this book.

17 The book then continues: In the early 1960s, we became
18 part of a great wave of mass movements that swept the world,
19 from Los Angeles to Paris to Tokyo. Here in U.S., great
20 numbers of African-Americans first took to the streets against
21 the same enemies as ours. Radical white students began to
22 oppose the Vietnam War and the profit-driven system that
23 dominates our society.

24 A woman's movement challenged the most basic power
25 relations, and Chicanos began a militant new liberation

1 movement, as did Puerto Ricans, Asian-Americans, and Native
2 Americans. As in other movements, we reached a high tide of
3 self-affirmation. I'm proud to be a Chicano.

4 That was not included in the passage that you found, that
5 your staff found, to violate 15-112, and that has a big effect
6 on what that meaning is, doesn't it? Right?

7 A. I would have to go back and read the whole book to see who
8 is being -- you know, the nature of the selectivity.

9 Q. It's fair to say that quote was taken out of context,
10 right?

11 A. I can't say one way or other another.

12 Q. Okay. Let's look at a couple of others, just a couple of
13 others briefly.

14 THE COURT: I think it's a good time to take our
15 recess.

16 MR. REISS: Yes, that's fair, Your Honor.

17 THE COURT: We will stand at recess at this time. Be
18 about 15 minutes or so.

19 MR. REISS: Okay, Your Honor, thank you.

20 (A recess was taken from 10:36 a.m. to 11:01 a.m.)

21 THE COURT: Okay. Let's all be seated, and we will
22 resume with the direct examination of plaintiffs' witness,
23 Mr. Huppenthal. Go ahead.

24 MR. REISS: Thank you, Your Honor. Just for the
25 record, for the court reporter, when we played the video clip

1 of Mr. Huppenthal's deposition, I can give you the deposition
2 page number and line numbers. That was from Mr. Huppenthal's
3 deposition on February 10th, 2016, Page Number 110, Lines 7 and
4 8, and Lines 10 to 16. Those were the deposition page number
5 and line cites to that impeachment clip.

6 Also, Your Honor, I don't know if it would be helpful
7 to the Court. If it is, I can introduce and provide to the
8 Court a copy of the book 500 Años Del Pueblo Chicano History.
9 If the State has no objection and if it would help the Court, I
10 am happy to offer the book as an exhibit.

11 THE COURT: I am not going to make that choice.
12 Whatever you think you need to do to present your case.

13 MR. REISS: I'll move the book into evidence.

14 THE COURT: All right.

15 MS. COOPER: The state has no objection.

16 THE COURT: All right. Without objection, put a
17 number on it, will you?

18 MR. REISS: Yeah.

19 MS. COOPER: It has a number.

20 THE COURT: It's admitted as --

21 MR. REISS: Do you know the number? We'll get that
22 number for the Court, Your Honor. Thank you.

23 BY MR. REISS:

24 Q. Continuing, Mr. Huppenthal, just to a couple of other
25 questions on the books that were the basis for the finding of a

1 violation of 15-112(A)(2). Again, let's stay with Defense
2 Exhibit 57, and directing your attention to Bates Number -- the
3 page ending in Bates Number 38. And you see that among the
4 materials that were found to support the violation of (A)(2) is
5 Rethinking Columbus: The Next 500 Years. Right?

6 There is a single four-line paragraph cited as the basis
7 for the violation. Were you aware that the book is 179 pages
8 long?

9 A. No.

10 Q. It's a one, four-line quote from a 179-page book, right?
11 Right? Let's look on Page 39, the Bates ending in 39, Message
12 to Aztlán, by Rodolfo Corky Gonzales. There's a cite from
13 Pages 32 to 34, right? Again, this is the basis for finding a
14 violation of Subsection (A)(2). See that? It's six lines,
15 right? Right?

16 A. Yes.

17 Q. And there, of course, is an ellipsis between the word
18 "southwest" and "we," right?

19 A. Yes.

20 Q. And you know, just from looking at this that there's a huge
21 amount of material being omitted, don't you? Because the page
22 cites are 32 to 34, and it's only six lines, right? So you
23 know there's a large amount of material that's being omitted
24 from this quotation, right?

25 A. Evidently.

1 Q. Yeah, evidently. Do you know how long this book is?

2 A. No.

3 Q. It's 302 pages. So you've objected to six lines out of a
4 book that's 302 pages long, right?

5 MS. COOPER: Objection, Your Honor. Counsel is
6 testifying.

7 THE COURT: Sustained.

8 BY MR. REISS:

9 Q. Let's look at Plaintiffs' Exhibit 103. Do you recall,
10 Mr. Huppenthal, that you gave an interview to NPR, National
11 Public Radio, on January 18th, 2012, right?

12 A. I gave so many interviews, that if this is an interview I
13 gave back in Washington, D.C., I received a call and I went to
14 NPR, I believe this would be that interview. But I can't be a
15 hundred percent sure until I --

16 Q. Do you recall being interviewed by -- I'm not sure if it's
17 Mitchell or Michael Martin, the host?

18 A. I don't recall who interviewed me.

19 Q. But you don't deny giving an interview to NPR in
20 Washington?

21 A. No.

22 Q. And in that interview, you told -- I'm not sure, do you
23 remember if it was a Ms. or Mr. Martin?

24 A. I don't have a recollection of who.

25 Q. Well, you told your NPR interviewer, did you not -- and

1 let's look at the third page of that exhibit. And starting
2 with the -- it's actually the exhibit with Page 261. I'm
3 sorry, the previous page, Jorge. That's it.

4 So Ms. or Mr. Martin says to you there, third -- fourth
5 paragraph down: Give us an example.

6 Give us an example, if you would, about specific courses or
7 specific parts of the program, the curriculum itself, which, as
8 we said, has now been scrapped, that caused you the most
9 concern.

10 And you said in response: Well, again, it's not
11 necessarily a specific thing. Like some people are talking
12 about the books. The books aren't of concern at all.

13 That's what you said, right? And, moreover, you continued.

14 Look at the next paragraph: So it's never the book. It's
15 about what's going on, the kind of behaviors.

16 And by that you meant what's going on in the classroom,
17 right?

18 MS. COOPER: Objection. Compound question.

19 THE COURT: Overruled.

20 MS. COOPER: Which question is the witness to answer?

21 THE COURT: Overruled. The question is, right, what
22 did you mean by "behavior"?

23 A. I go on right in that paragraph to describe an example of
24 what's inappropriate. The writing in that paragraph that says
25 it was laid out in a journal article. They were going to

1 racemize -- that was a word that they were using -- Paulo
2 Freire's construct, this idea of the oppressed and the
3 oppressor. And this went directly to the Statutory 15-112
4 creating resentment among racial groups.

5 If you characterize the relationship between racial groups
6 of Hispanics being oppressed and Caucasians being oppressors, I
7 think that's of grave concern to all policymakers. And
8 literally, we had one of the students say, "I didn't know I was
9 oppressed until I got into this class." So that was the
10 concern.

11 You can do -- and I think great teachers bring very
12 controversial books into the classroom, but they're very
13 careful about how they inculcate regular thinking among the
14 students regarding those books, and that's where the concern
15 was, that those books were being used to indoctrinate, not to
16 enlighten.

17 Q. Right. So it's all about, as you said, what's going on in
18 the classroom, right?

19 A. Yes.

20 Q. By the way, on the next page, Page 263, the third
21 paragraph, you then bring up again the Che Guevara poster,
22 right? The third paragraph down. There's a poster of Che
23 Guevara. Still focused on that, right? Then you also in the
24 next paragraph bring up the remark about Ben Franklin, right?
25 And these were both things that happened in Curtis Acosta's

1 class, the one class you visited, right?

2 A. Yes.

3 Q. You also said, look at the very bottom of this page:

4 One, there was a claim made that the students in the
5 Mexican-American Studies classes had better academic results.
6 We subjected that to rigorous review.

7 There was a claim made in the Cambium report, right -- we
8 read it yesterday -- that, in fact, the MAS program did have
9 significant positive effects on the performance of
10 Mexican-American students, right?

11 A. Yes.

12 Q. And you said you subjected that claim to "rigorous review,"
13 right? This is in 2012. That's what you said, right?

14 A. I think I was referring to two things. Robert Franciosi
15 had done an analysis of AIMS scores, and he was a really
16 top-notch researcher.

17 And also we took a look at the graduation rates of the
18 students to analyze the actual data that was in there. So
19 that's what we're referring to there.

20 Q. So that's the rigorous review that you're referring to,
21 Mr. Franciosi's?

22 A. Mr. Franciosi's, and also, separate and apart from that,
23 looking at the graduation rates.

24 Q. And there had been other studies, had there not been,
25 Mr. Huppenthal, that actually showed that the MAS program did

1 achieve very positive results, right? This is in 2012,
2 January 2012.

3 MS. COOPER: Objection. States facts not in evidence.

4 THE COURT: Overruled. You can answer.

5 A. Well, just to give you some perspective, I read studies
6 every day, and one of the studies that had the biggest impact
7 on me was the National Reading Panel. They spent 10 million
8 dollars analyzing the top 10,000 studies in reading, and they
9 found that 96 1/2 percent of them weren't worth the paper they
10 were written on.

11 We have an endemic problem within education, is that almost
12 all of the studies -- there's a very high degree of
13 intellectual corruption. Association error is rampant within
14 education culture.

15 So my just obvious look at the Cambium results, was, wow,
16 they just went and did it. It's not a very in-depth analysis
17 at all, what we saw in the Cambium report. It doesn't pass
18 even minimal muster in my book.

19 And this is what I do, I read studies a lot. And so the
20 biggest challenge you have is carefully reading through the
21 study to see what value it brings to the table.

22 Q. Well, we'll see through other witnesses, Mr. Huppenthal,
23 whether, in fact, rigorous --

24 THE COURT: Just a minute. You don't have to comment
25 like that. All right.

1 MR. REISS: You're right, Your Honor. I'm sorry.

2 Withdrawn. Withdrawn.

3 BY MR. REISS:

4 Q. Let's go to another exhibit. Plaintiffs' Exhibit 92.

5 Now, on June 15th, you made a determination -- and this is
6 after -- after the Cambium report was issued and after you had
7 your staff do their own investigation, right? Right? This is
8 June 15th, 2011.

9 A. Yes.

10 Q. Okay. And you made a determination that the MAS program
11 was in violation of 15-112, right?

12 A. Yes.

13 Q. Looking to the bottom of the page, you say that -- and it's
14 the third paragraph, begins from the third paragraph from the
15 bottom: I specifically had several concerns with the audit.
16 Right? This talking about the Cambium audit. You say: I
17 specifically had several concerns with the audit. First,
18 two-thirds of the final audit report was beyond the scope of
19 the legal determination I am making today. Second, the Tucson
20 Unified School District Administration knew which week the
21 on-site classroom reviews and interviews would be taking place.
22 In addition, only 37 percent of the Mexican-American Studies
23 program classrooms were observed. Most classrooms were visited
24 just once and for only 30 minutes. Right? That was the basis
25 for your rejection of the Cambium report. Right?

1 A. Yeah.

2 Q. Now, let's take a look, by the way, at the first of those
3 bases. You said, first, "two-thirds of the final audit --"

4 A. If I could --

5 THE COURT: Just a minute. There's no question
6 pending, Mr. Huppenthal.

7 MR. REISS: Thank you, Your Honor.

8 THE WITNESS: I would like to complete the answer to
9 the previous question.

10 BY MR. REISS:

11 Q. You say -- the first reason you gave is first: Two-thirds
12 of the final audit report was beyond the scope of the legal
13 determination I am making today.

14 Right? Do you recall which two-thirds that was?

15 A. I do not.

16 Q. Well, in fact, the two-thirds of the audit report were two
17 issues that the request for the audit report specifically asked
18 Cambium to address, right?

19 MS. COOPER: Objection. He just testified he didn't
20 recall.

21 THE COURT: I'll permit the question. You can answer
22 if you know the answer.

23 A. I don't. I don't recall, just looking at this right now,
24 the -- what the issue was separating the reports. My concern
25 with the report really started with Elliott Hibbs telling me

1 that the audit was of limited usefulness, and my recollection
2 of the concerns about it were that the -- A, the behavior of
3 the teachers when the inspectors were in the classroom was
4 different from what they observed from looking at lesson plan
5 documentation.

6 And, B, that the -- that a lot of the teachers refused to
7 participate in the audit. And, finally, C, there was a very,
8 very small sample size, because there were a lot of substitute
9 teachers. And there were a lot of activities in which there
10 was no MAS curriculum or lesson plans even being exhibited.

11 So he described the -- Elliott described the report as
12 being -- having limited usefulness. And that's, that's all
13 part of two. I was relying on Elliott Hibbs, Kathy Hrabluk and
14 John Stollar to deal with this issue, to come to grips with it,
15 and to make approximate recommendations about how we were
16 moving forward.

17 And so when you talk about me interacting directly with the
18 report, it was really one step removed. I had highly competent
19 personnel who were carrying this out, it wasn't me carrying
20 this out.

21 BY MR. REISS:

22 Q. But the first reason you gave for rejecting the Cambium
23 report was that two-thirds of the final audit was beyond the
24 scope of the legal determination, right?

25 MS. COOPER: Objection. Asked and answered.

1 THE COURT: It was asked, but I don't think it was
2 answered.

3 MR. REISS: Thank you, Your Honor.

4 A. I don't -- it's there in writing, but I would have to go
5 back and analyze. That's sort of an incomplete sentence. It
6 doesn't really describe the whole -- what -- the two-thirds
7 it's referring to.

8 BY MR. REISS:

9 Q. And those two-thirds were specifically requested by the
10 Department of Education in their proposal for the audit, right?

11 MS. COOPER: Objection. Foundation.

12 THE COURT: Overruled. You may answer if you know.

13 A. I presume that they -- looking back at the -- thinking back
14 to the request for proposal, that they had alignment of
15 standards on issues like that; that they had -- on the request
16 for proposal. They also had issues like alignment with
17 standards, and I -- I don't know that that dealt with
18 compliance with 15-112 or not. I don't -- I don't see how it
19 does one way or another.

20 Q. Let me --

21 A. I'm presuming that this has something to do with those
22 other issues.

23 Q. Let me see if I can help your memory, Mr. Huppenthal.

24 Let's look at Plaintiffs' Exhibit 62. And the next page.

25 This is the actual request for the audit. And if you see

1 Purpose, Scope of Work. Scope of work. Purpose.

2 Purpose: The Arizona Department of Education has the
3 following purposes for establishing this scope of work request:
4 To conduct a curriculum audit of Tucson Unified School
5 District's Mexican-American Studies program.

6 That's the general subject of the audit.

7 And then: To establish the degree of alignment between
8 MASD's curriculum and the relevant Arizona State standards
9 established by the Board of Education. That's the first
10 objective. Second: To determine, one, how or if TUSD's MASD
11 programs are designed to improve student achievement, and, two,
12 if statistically valid measures indicate student achievement
13 occurred. So that's the second mission of the audit, right?
14 And, three, to determine whether MASD's curriculum is in
15 compliance with A.R.S. Section 15-112.

16 So although you found that two-thirds of the audit had
17 nothing to do with the legal determination you were supposed to
18 make, in fact, those two-thirds of the audit were requested by
19 the Arizona Department of Education, right?

20 A. Yes. It was only the last purpose down there, in the scope
21 of work, that dealt with the finding. So most of the request
22 did not actually deal with violations of 15-112.

23 Q. Well, then, let's take -- let's go back to Exhibit 92 and
24 look at the second reason you gave.

25 Second, the Tucson Unified School District administration

1 knew which week the on-site classroom reviews and interviews
2 would be taking place.

3 Let's just stop there. Do you know how it was that the
4 Tucson Unified School District administration knew which week,
5 week, those classroom visits would be taking place?

6 A. I have -- a general recollection is that they were
7 demanding to know when, exactly when, they were taking place.
8 And in order to gain entrance into the classrooms, the auditors
9 were having to schedule that entrance. So there was complete
10 awareness of when.

11 Q. In fact, Mr. Huppenthal, the audit plan approved by your
12 staff specifically noted the week that those classroom visits
13 would be taking place, right?

14 A. Well, my recollection is that there were interactions going
15 on, and it was a highly tense environment associated with
16 getting access to classrooms and getting teachers to cooperate.

17 There were -- my recollection is there were a number of
18 teachers who refused to cooperate, and there were no visits
19 being scheduled to those classes. So what -- if the result of
20 all that was that we were publishing a schedule, I mean, that
21 would be a logical outcome, that there would be a published
22 schedule.

23 Q. The simple fact is, Mr. Huppenthal, the audit plan approved
24 by your staff noted which week the classroom visits would take
25 place, right?

1 A. I don't have any specific knowledge of that, but if you say
2 so.

3 Q. Now, let's look at the next reason in that second
4 paragraph: In addition, only 37 percent of the -- only 37
5 percent of the Mexican-American Studies classrooms were
6 observed. Most classrooms were visited just once for only 30
7 minutes.

8 So it was your view that visiting 37 percent of the
9 classrooms was somehow inadequate?

10 A. I think these questions would be better addressed to Kathy
11 Hrabluk, who was overseeing this and doing her work to
12 determine what was going on in those classrooms and the degree
13 to which she felt comfortable.

14 But the feedback I was getting from Elliott Hibbs, John
15 Stollar and Kathy Hrabluk was that they felt that the
16 observations, that the whole report had limited usefulness
17 because they felt -- because all of the issues associated with
18 observing those classrooms, and only 37 percent was part of
19 that.

20 Q. This is --

21 A. Not just the fact that only 37 percent were observed, but
22 actually the kind of activities they observed when they went in
23 there, the number of substitute teachers, the number of
24 classrooms in which off-activity, off-curriculum activity was
25 taking place.

1 So there were a variety of issues that were associated and
2 came to the -- caused Mr. Hibbs to come to the conclusion that
3 the audit was of limited usefulness.

4 Q. This is your statement, right, Mr. Huppenthal? Your
5 statement, right?

6 A. Yes.

7 Q. Okay. You said: Only 37 percent of the Mexican Studies
8 Program classrooms were observed, and that's a reason why you
9 rejected -- one of the reasons that you rejected the Cambium
10 audit, right?

11 A. Yeah. I didn't sit down and draft this statement. This
12 was a statement drafted for me, a recommendation by a staff
13 that I had a lot of confidence in. I read it, and they
14 explained to me where the numbers came from, but that's --
15 that's the nature of it. But it's my statement, yes.

16 Q. Your statement, on an important matter --

17 A. Yeah.

18 Q. -- right? Not one to be cavalierly made, right?

19 A. Right.

20 Q. In fact, Mr. Huppenthal, visiting 37 percent of the MAS
21 classrooms is a high percentage of classrooms to be visited
22 during a curriculum audit, isn't it?

23 A. I don't -- I don't know that.

24 Q. You recall our deposition, right? And you recall being
25 asked these questions and giving the following answers at Pages

1 85, Line 6, to Line 15.

2 (Video playing.)

3 You remember being asked that question and giving that
4 answer, right, Mr. Huppenthal? Right?

5 A. Yeah. Well, obviously.

6 Q. And you were under oath in your deposition, right?

7 A. Yeah.

8 Q. Right?

9 A. Yes.

10 Q. Let's look at page -- Plaintiffs' Exhibit 94. And this,
11 Mr. Huppenthal, is a press release. And it's a press release
12 on June 16th, 2011 from your office concerning the finding that
13 the Tucson Unified School District MAS program was in violation
14 of 15-112, right? Right? Is that what this is?

15 A. Yes.

16 Q. Going down to sort of the middle of the page, the paragraph
17 begins -- it starts with: "As the superintendent indicated."

18 As the superintendent indicated, the Arizona Department of
19 Education conducted an intensive investigation spanning many
20 months of TUSD's Mexican-American Studies Department and its
21 program.

22 And you say: The majority of the information collected by
23 ADE was obtained from sources outside of the independent
24 curriculum audit. It should be stressed that the Cambium audit
25 was based on information gathered during limited classroom

1 observations, and therefore, limited in its usefulness in the
2 superintendent's determination for the following reasons. And
3 you give some reasons.

4 You said the majority of information collected by the ADE
5 was obtained from sources outside the independent curriculum
6 audit, right?

7 A. Yes.

8 Q. But the auditors made clear, did they not, in their Cambium
9 report, that it was critical to the integrity of any curriculum
10 audit that the sources be trustworthy, right?

11 A. I don't -- you would just presume that.

12 Q. Okay. And in fact, materials were provided from outside
13 sources who were not trustworthy, right?

14 A. No.

15 MS. COOPER: Objection. States facts not in evidence.

16 THE COURT: The objection is overruled. I think he
17 answered. You said no, didn't you?

18 THE WITNESS: Yeah, I don't have any knowledge that
19 that is the case.

20 BY MR. REISS:

21 Q. You don't, okay.

22 A. Now --

23 Q. Let's look at --

24 A. -- as I'm looking at this right here, it says only 37
25 percent of the Mexican-American Studies classrooms were

1 observed. That statement, when you examine the statistics of
2 it, you have to know the size of the universe, and once you get
3 down to a universe less than 300, that statement might have a
4 high degree of relevance. I haven't focused on it 'til you
5 brought up the previous testimony, 'til right now, but that
6 absolutely could be a highly valid statement, that only 37
7 percent.

8 When you get down to very small universe sizes, your
9 requirements for sample sizes go up extraordinarily. So
10 they -- so, again, to that issue, the 37 percent, that might be
11 highly valid that that was a problem that there was only 37
12 percent observation. I don't know what the universe of
13 teachers was or what the 37 percent -- what number of teachers
14 that represented.

15 Q. But your staff didn't visit any classrooms, right? Right?

16 A. Excuse me?

17 Q. Your staff didn't visit any classrooms, right?

18 A. Not directly, no.

19 Q. Thank you. Now, I believe you just said that you didn't
20 have any knowledge that any of the sources for the materials
21 were unreliable, right? The outside materials, you didn't have
22 any knowledge that they were unreliable?

23 A. Well, I wouldn't describe them as "outside materials." The
24 representations that I had for the materials that I observed
25 were lesson plan data, exercises conducted by students, writing

1 samples of students. These were all directly extracted from
2 the interactions between teachers and students. That was the
3 material that I observed that was outside of the audit that was
4 collected by direct interactions with the schools and the
5 teachers.

6 Q. Isn't it true, Mr. Huppenthal, that among the materials you
7 relied upon and your staff relied upon were materials provided
8 by a woman named Laura Leighton? Isn't that true?

9 A. No.

10 Q. It's not?

11 A. No.

12 Q. Weren't you on notice that Laura Leighton was providing
13 information and materials to your staff?

14 A. Laura Leighton provided a lot of materials. I took them
15 with a grain of salt.

16 Q. Mmm-hmm. In fact, you knew Laura Leighton was not a
17 credible person, right?

18 A. No, I did not know that she was not credible. I didn't
19 know that she was credible. I had a general policy when people
20 interacted with my office, I listened to them carefully, but I
21 try to think deeply about what they're saying.

22 Q. Defense Exhibit 557 -- 534. I'm sorry. I apologize. 534.
23 All right. Mr. Huppenthal, this is an e-mail to you on April
24 14th, 2011, and it is from John Hunnicutt. Who is John
25 Hunnicutt?

1 A. I just have a vague recollection that he was active on the
2 TUSD issue and he lived in Tucson.

3 Q. Okay. And let's look at the paragraph below that, the
4 e-mail below that. Expand it a little bit, Jorge, down another
5 paragraph.

6 "I just got a wild call." Yeah.

7 So in this e-mail chain, Lori Hunnicutt writes to John
8 Hunnicutt, who writes the e-mail to you: "I just got a wild
9 call. The caller said Huppenthal's team interviewed the crazy
10 lady Laura. They were surprised that anyone would take her
11 seriously?"

12 And if we go up to the e-mail from Mr. Hunnicutt to you, to
13 you, he says: "Superintendent Huppenthal, I copied my wife on
14 my e-mail to you this a.m. Her e-mail speaks for itself.
15 Please encourage the investigators to speak to the teachers and
16 staff. Laura is not a credible source. The staff lives in
17 real fear every day."

18 So you knew, did you not, that Laura Leighton, a
19 non-credible source, was providing information to your staff
20 about the audit?

21 MS. COOPER: Objection. There's no information about
22 who this Mr. Hunnicutt is.

23 THE COURT: The objection is overruled. The witness
24 may answer.

25 A. When you're in public service, you get lots of information

1 that flows in to you. You need to read it all with a grain of
2 salt. But you need to read it all. You know, it's part of the
3 Constitution that you represent everybody out there, but you
4 always need to be highly skeptical about any information that
5 you -- that's coming in.

6 BY MR. REISS:

7 Q. Especially when you're being informed that your staff is
8 getting information and materials from someone who is not a
9 credible source, right?

10 MS. COOPER: Objection. There's no indication whose
11 staff it is.

12 THE COURT: Objection's overruled.

13 BY MR. REISS:

14 Q. Right?

15 A. I can't tell from this communication if Laura is a credible
16 source or not. Just because one person describes another
17 person as a credible source or not a credible source, that has
18 no meaning to me. I don't know the expertise they have to
19 speak about it.

20 Q. Going back, Mr. Huppenthal, to Exhibit 94. The very last
21 paragraph, the bottom paragraph on that page, you note that:
22 Despite the limitations, the Cambium report did highlight
23 textbooks deemed to be questionable, partisan, and age
24 inappropriate found within classrooms or on MASD reading lists.
25 Right? So the Cambium audit noted that, right?

1 A. Yes.

2 Q. Okay. But they also noted there was no evidence that those
3 materials were being used, right? Right?

4 MS. COOPER: Objection. Misstates the document.

5 THE COURT: Objection's overruled.

6 A. I don't know what you just stated to be true. I'd have to
7 go back and take a look at things.

8 BY MR. REISS:

9 Q. Now, the Tucson Unified School District appealed your
10 termination of the MAS program through the process provided by
11 Arizona law, right?

12 MS. COOPER: Objection, misstates the finding. It
13 didn't terminate the program.

14 THE COURT: Overruled.

15 BY MR. REISS:

16 Q. They appealed, right?

17 A. They appealed my finding.

18 Q. Yeah, that's all I asked. And ultimately the
19 administrative law judge made a finding that some classes or
20 courses violated the statute, right?

21 A. My recollection is the administrative law judge upheld the
22 finding. I would describe it generally like that. That's my
23 perception of what took place.

24 Q. The administrative law judge didn't find that all MAS
25 classes and courses violated 15-112, did he?

1 A. I don't -- I don't know. I don't recall exactly to what
2 extent he detailed out which classes did or did not violate the
3 law.

4 Q. Do you recall whether the administrative law judge found
5 that the MAS courses in elementary school violated the statute?

6 A. I don't have the specific recollection about that.

7 Q. Do you recall whether he found that the MAS program in the
8 middle school violated the statute?

9 A. I don't -- I don't have a specific recollection, and I
10 haven't gone back and reviewed it again. I read it at the time
11 and went over it to -- and I also tasked my staff with doing a
12 detailed review of the judge's findings, and my general sense
13 of it was that our findings were upheld.

14 Q. And again, do you recall whether the administrative law
15 judge found that Chicano art classes violated the statute?

16 A. I don't have a specific recollection on that detail.

17 Q. Then on January 6th, now, Exhibit 108 --

18 MR. REISS: Again, Your Honor, this is a stipulated
19 exhibit. It's in evidence. Thank you, Your Honor.

20 BY MR. REISS:

21 Q. This is an order accepting recommended decision, right?

22 A. I believe so.

23 Q. If you look at the next page, it's your order, right? It's
24 your signature, right?

25 A. Yes.

1 Q. Okay. And in this order, that last paragraph before your
2 signature, you ordered: Accordingly, pursuant to Section
3 15-112(B), the superintendent hereby instructs the Arizona
4 Department of Education, the department, to withhold 10 percent
5 of the monthly apportionment of state aid that would otherwise
6 be due the district, effective from August 15th, 2011 through
7 the present, and until such time as this violation of A.R.S.
8 Section 15-112 is corrected. The Department shall adjust the
9 district's apportionment accordingly."

10 That was ordered January 6th, 2012. You signed that order,
11 right?

12 A. Yes.

13 Q. And you knew when you signed this order that withholding 10
14 percent of the state funds from the TUSD School District was a
15 death knell, eliminated completely the MAS program, right?

16 A. No. Again, at that time they have now had, through all of
17 2011, to come to grips with the violations, and so they've had
18 a lot of time to fix it. So what we were doing is presenting
19 a it's time to close this out and get this done and get this
20 cleaned up.

21 Q. Right. And you didn't only order that 10 percent of the
22 funds going forward be withheld, right? You didn't just order
23 that. I'm looking at your order. You ordered that 10 percent
24 of the funds going back to August 15th, 2011, five months
25 before, that they also be withheld, right?

1 A. Yes. That would have been 60 days from the finding. So
2 that would have been the -- so this was the appropriate
3 decision, given the fact that the finding was upheld.

4 Q. And as we noted previously, given the economics, there's no
5 way on earth the Tucson Unified School District could have
6 sacrificed 10 percent of the funds from the State, right? They
7 couldn't do that?

8 MS. COOPER: Objection. Argumentative.

9 THE COURT: Sustained. It's also asked and answered.

10 MR. REISS: Thank you, Your Honor.

11 BY MR. REISS:

12 Q. By the way, after you issued this order, the Tucson Unified
13 School District terminated the MAS program, right?

14 A. Yes.

15 MS. COOPER: Can you speak up a little, please,
16 counsel?

17 MR. REISS: Yes. Did you hear that?

18 MS. COOPER: Yes, thank you.

19 MR. REISS: Okay.

20 (Reporter requested to hear the answer.)

21 MR. REISS: I believe the answer was "yes," but I
22 don't want to speak for the witness.

23 THE WITNESS: Yes.

24 BY MR. REISS:

25 Q. The next month, in February 2012, a month after you issued

1 the order, you gave an interview to the Western Free Press. Do
2 you recall that?

3 A. I do.

4 Q. Let's look at that interview.

5 MR. REISS: Your Honor, this is Plaintiffs' Exhibit
6 104, in evidence. Thank you, Your Honor.

7 MS. COOPER: Plaintiffs' Exhibit 104?

8 MR. REISS: In evidence.

9 MS. COOPER: In evidence.

10 (Video playing.)

11 BY MR. REISS:

12 Q. That's an accurate representation of your strategy, to
13 stretch them out?

14 A. No. Looking forward -- looking backward on it, I can
15 describe it that way. And the strategy going forward was to
16 give them every chance to heal themselves. And my observation
17 was, as superintendent, I was responsible for 1.1 million
18 students, and we had several hundred students in ethnic studies
19 in Tucson Unified School District.

20 To me, the very danger was that the very tip of the tail
21 would be wagging the whole dog. And so the strategy was to
22 give them every chance to heal themselves and have the whole
23 issue just simply go away, because they would develop a
24 curriculum, develop lesson plans, do a hearing in front of
25 their school board, and come up with something that the

1 community could be proud of.

2 They got stretched out because they were unable to
3 galvanize themselves to do what was needed. And being
4 stretched out ended up working out okay for me strategically,
5 in terms of what I was trying to do in Arizona, but I don't
6 really think it worked out for Tucson Unified School District.

7 And so the battles between conservatives and liberals, they
8 don't advance the ball down the court, and my objective was to
9 advance the ball down the court academically. This was a side
10 issue, something that was a deep distraction and something that
11 I was hoping would just simply go away. Because I really felt
12 like the Tucson Unified School District had to get itself
13 together and for Arizona education to be successful.

14 A better outcome would have been for them to develop a
15 curriculum, develop appropriate lesson plans, do hearings in
16 front of their school board, get the community to accept it,
17 get the activists to come in, issue their complaints in front
18 of the school board, have them addressed to whatever degree
19 they should be addressed. That, to me, is how you do policy.
20 And the TUSD just simply didn't seem like it could get their
21 game together.

22 Q. And you said this was a side issue, and you hoped it would
23 go away. You just said that, right?

24 A. I hoped it would be dealt with appropriately so that it
25 would not distract us from our main mission as a state.

1 Q. But in fact, Mr. Huppenthal, you said your war with MAS was
2 a battle that never ends, right? Right?

3 A. It's eternal. It goes back to the plains of the Serengeti,
4 you know, when we were evolving as a human race, the battle
5 between the forces of collectivism and individualism. It
6 defines us as a human race.

7 Q. Okay.

8 THE COURT: Hold on. It's 12:00 clock. We'll take a
9 noon recess.

10 MR. REISS: Yes, Your Honor. Thank you for your
11 patience.

12 THE COURT: We'll resume at 1:30 p.m. You may step
13 down, sir.

14 MR. REISS: Thank you, Your Honor.

15 (A recess was taken from 11:55 a.m. to 1:37 p.m.)

16 THE COURT: All right. Let's all be seated, please.
17 I see our witness is in the witness box. Mr. Reiss is ready to
18 go?

19 MR. REISS: Yes, Your Honor. Thank you.

20 THE COURT: Please proceed.

21 MR. REISS: Just a little housekeeping. Your Honor,
22 we had moved into admission the book 500 Years of Chicano
23 History. The state had an exhibit with respect to this book,
24 which was Defense Exhibit 557M, it was excerpts from the book,
25 but we have moved -- the state has not objected -- to putting

1 the whole book in evidence, and it is now the entire book is
2 now, Plaintiffs' 229.

3 THE COURT: 2-2-9?

4 MR. REISS: 2-2-9, Your Honor.

5 THE COURT: All right. Without objection, is that
6 right?

7 MS. COOPER: That's correct.

8 THE COURT: 229 is admitted.

9 BY MR. REISS:

10 Q. Good afternoon, Mr. Huppenthal.

11 A. Good afternoon.

12 Q. Now, what was your last day in office as superintendent?

13 A. I began service in 2011. It's a four-year term, so that
14 would bring it to a close in 2014, and I don't recall exactly
15 if it was January 3rd or 2nd. I don't recall exactly.

16 Q. Do you recall, you were in office on January 2nd, 2015,
17 right?

18 A. I actually don't -- I don't know the answer to that
19 question. I don't know what the last day was. I know it
20 terminates in that very first day of the first week, I believe.

21 Q. So January 2nd, 2015 would have been at the very, very end
22 of your office?

23 A. Yes. Mmm-hmm.

24 Q. Okay. Mr. Huppenthal, directing your attention to
25 Plaintiffs' Exhibit 118.

1 MR. REISS: Your Honor, this exhibit is not admitted
2 into evidence. The state has objected, defendants have
3 objected.

4 MS. COOPER: The state has numerous objections to this
5 line of questioning, Your Honor.

6 THE COURT: Well, what are you going to do now?

7 MR. REISS: I'm just going to establish it's an
8 official statement by Mr. Huppenthal in January --

9 THE COURT: He can use it for that purpose.

10 MR. REISS: Thank you, Your Honor.

11 THE COURT: I'm not going to rule on the admissibility
12 now. Go ahead.

13 MR. REISS: Thank you, Your Honor.

14 BY MR. REISS:

15 Q. Mr. Huppenthal, Plaintiffs' Exhibit 118 is a document that
16 you issued on one of your last days in office as
17 superintendent, right?

18 A. Yes.

19 Q. In fact, Mr. Huppenthal, it's to H. T. Sanchez,
20 Superintendent, Tucson Unified School District, from John
21 Huppenthal, Superintendent of Public Education. Subject,
22 Notice of Non-Compliance. That's your signature, right?

23 A. Yes.

24 Q. So this is a document that you read and signed, right?

25 A. Yes.

1 MR. REISS: Your Honor, I would move it into evidence
2 at this point, unless Your Honor needs to hear anything further
3 about it. I do have some questions.

4 THE COURT: Well, let me find out. Any objection?

5 MS. COOPER: Yes, I do object.

6 THE COURT: On what basis?

7 MS. COOPER: Well, the MAS program terminated, as
8 everyone knows --

9 THE COURT: What's the basis? You don't have to
10 explain. Relevancy? Hearsay? What?

11 MS. COOPER: The basis of the objection is relevance.

12 THE COURT: All right. The objection's overruled.
13 The exhibit is admitted. Thank you.

14 MR. REISS: Thank you, Your Honor.

15 BY MR. REISS:

16 Q. And in this document, Mr. Huppenthal, you're finding that
17 the CRC program is in violation of 15-112, right?

18 A. I don't know -- I don't know the definition of "CRC," and I
19 don't see a reference to CRC in the exhibit in front of me.

20 Q. Well, it's a notice of non-compliance, do you remember what
21 the non-compliance was?

22 A. Jennifer Flowers, who was one of my assistant
23 superintendents, had taken oversight of the monitoring of
24 Tucson Unified School District, and Carol, I'm misplacing her
25 last name. They had been doing classroom visits, and they just

1 felt that on a whole variety of levels that the TUSD classes
2 were falling below minimum standards, not just on issues of
3 15-112, but on basic quality of lesson plans and curriculum, on
4 organization of the classes, on effective use of time within
5 the classes. And I was uncomfortable about issuing a finding
6 close to the end of the term, but these were highly
7 professional people, they had done a good job of monitoring.

8 I asked to Superintendent Elect Diane Douglas, I went to
9 her and I said, "Look, I have professional staff, they have
10 made this determination, I'm uncomfortable doing this, so I'm
11 going to -- how do I feel about this?" And she said, "If you
12 feel that your staff has done a good job doing the monitoring,
13 proceed." So I did.

14 Q. And just to be clear about what this notice of violation is
15 about, in the first paragraph, it says: "This notice of
16 non-compliance is issued pursuant to A.R.S. Section 15-112 and
17 the settlement agreement reached in the matter of Tucson
18 Unified School District No. 1. For the reasons described
19 below, there is reasonable cause to believe that the Tucson
20 Unified School District is in violation of the referenced
21 settlement agreement in that it has one or more courses or
22 classes that violate A.R.S. Section 15-112(A)(1), (2), and (4).

23 So that's what this notice of violation was, it was a
24 notice of violation of Section 15-112, right?

25 A. Okay.

1 Q. And I know you've testified that this was really done
2 largely by your staff, but you read this notice of violation
3 before you sent it to Mr. Sanchez, did you not?

4 A. Yes. We had a fairly extensive discussion of what they
5 were observing in their monitoring, and part of the reason I
6 proceeded with the finding is they were just so upset. These
7 were professional educators. Jennifer Flowers had been a
8 Principal of the Year award, the superintendent, a national
9 superintendent of the year. I mean, Carol had numerous awards
10 as a principal. These were highly non-partisan people who were
11 very upset about what they were observing, the degree of
12 organization in the class. It was on a whole variety of levels
13 that they wanted to send a wake-up call to TUSD about the
14 inadequacy of what they were observing.

15 Q. Right. And you cited specific materials that you thought
16 would give the Tucson Unified School District a wake-up call,
17 right? That's what you were trying to tell them, what
18 materials were a problem, in this finding of violation. Right?

19 A. Yes, and I don't think it was just simply materials, per
20 se, or even ethnic studies issues, per se. I think all of
21 those things were part of it. But what I detected with
22 Jennifer and Carol was, you know, these are superstar
23 educators, and they were just angry that these children were
24 being poorly served by -- in these classes.

25 Q. Okay. Well, let's just take a look at a couple of things

1 that you cited in your January 12th finding, notice, as
2 indicating a violation of 15-112. If I could look at Page 3 of
3 your notice of non-compliance. Down at the bottom, for the
4 Cholla Magnet U.S. History Culturally Relevant Mexican-American
5 Perspective Course, you cite: Rage Against the Machine's "Take
6 the Power Back" as a violation of A.R.S. 15-112(A)(1).

7 (A)(1) is the section that prohibits overthrow of the
8 government, right?

9 A. Yes.

10 Q. Did you know at the time who Rage Against the Machine was?

11 A. I found out quickly. I got a call from my daughter in the
12 music business in Tennessee. She said, "Dad, what are you
13 doing?" I found out quickly.

14 Q. And the reason you found out quickly is Rage Against the
15 Machine is a Grammy Award-winning group, right?

16 A. I don't know that independently. I just...

17 Q. Let's just take a look at one or two others. I don't want
18 to spend too much time on this. On Page 4, again, this is
19 material cited as being in violation of 15-112(A)(4). It goes
20 the bottom of Page 4, on to Page 5. Again, from Cholla Magnet,
21 English from Culturally Relevant African-American Perspective,
22 and the material cited is an Introduction to Hip-Hop presented
23 by Master Teacher KRS-One. And the finding is that this
24 violates (A)(4), promotes ethnic solidarity. Did you know what
25 ethnic group this material promoted ethnic solidarity for?

1 A. No.

2 Q. Do you know if hip-hoppers is an ethnic group?

3 A. No, I don't.

4 Q. And finally, you also cite a little further down that page,
5 Mr. Huppenthal, under Tucson Magnet High School, Subheading A,
6 also as a violation of (A)(4): "Classroom rules include a
7 requirement that students stand to recite Lak'ech. Did you
8 know what Lak'ech was?

9 A. It's sort of a spiritual movement kind of thing, and I got
10 the sense that it was similar to Zen or Buddhism, in terms of
11 what it espoused.

12 Q. Did you know it was effectively the Mayan version of the
13 Golden Rule: Do unto others as you would have them do unto
14 you?

15 A. I got a general sense. My sense of it was a little
16 different than what you're describing, but not opposed to what
17 you're describing. I think it's -- I think you're getting
18 close to the line, if not over the line, when you -- to that
19 kind of indoctrination.

20 These particular things, I don't think that they're
21 creating a sense of community like that. It's particularly
22 dangerous for kids. It's when you have them collectively as a
23 group come to the conclusion that there is some exterior force
24 oppressing them, and you define that in racial terms, that's
25 where the concerns come in. And you start to dance pretty

1 closely to it when you get into this kind of recitation.

2 Q. But nevertheless, your staff put forth, and you accepted, a
3 finding that the recitation of Lak'ech violated 15-112(A)(4).

4 Right?

5 A. Yes.

6 Q. Now, Mr. Huppenthal, I want to ask you finally about a
7 number of comments that you posted on the Internet and blogs.
8 And I know this is not a particularly pleasant subject for you,
9 but it's quite important that I ask about it.

10 Mr. Huppenthal, when you were blogging, you used the handle
11 "Falcon 9," did you not?

12 A. Yes.

13 Q. Do you know anyone else who was blogging about the MAS
14 program who used the handle Falcon 9?

15 A. Not in the blogs that I tracked.

16 Q. Okay. So I am just going to ask you, Mr. Huppenthal, about
17 several blogs, certainly not all of them, that you posted. The
18 first one I want to ask about was on December 14th, 2010. And
19 the blog post was, quote: "No Spanish radio stations, no
20 Spanish billboards, no Spanish TV stations, no Spanish
21 newspapers. This is America, speak English."

22 You posted that blog on December 14, 2010, did you not?

23 A. Yes. Out of context, that's what I posted.

24 Q. Okay. And on the very next day, December 15th -- and that
25 was posted as Falcon 9, right?

1 A. Mmm-hmm.

2 Q. And the next day, December 15, 2010, you posted again as
3 Falcon 9 the following blog: "The rejection of American values
4 and embracement of the values of Mexico in La Raza classrooms
5 is the rejection of success and embracement of failure."

6 You posted that blog on December 15th, right? Right?

7 A. Yes.

8 MS. COOPER: If counsel is reading from the
9 demonstrative that they provided to us last night, we're
10 willing to stipulate that these are the statements that
11 Mr. Huppenthal made. That would cut short your examination and
12 allow us to move on.

13 MR. REISS: If there were 10 blog posts on our
14 demonstrative, and if you're going to stipulate that
15 Mr. Huppenthal made each of those blog posts, it will cut short
16 my exam and I will simply ask about the summary of those blog
17 posts.

18 MS. COOPER: That's fine.

19 THE COURT: Is that an agreeable stipulation?

20 MS. COOPER: Right. I believe that Mr. Reiss has the
21 demonstrative that he provided to me last night, and he
22 indicated which exhibits those blog posts came from, and
23 assuming that is the information that he is reading from now,
24 that is an acceptable stipulation.

25 THE COURT: How many are there, posts?

1 MR. REISS: There are 10, Your Honor, and they're
2 short, and I just want to place them on a timeline for Your
3 Honor, because I think when they are made --

4 THE COURT: That's fine.

5 MR. REISS: Thank you, Your Honor.

6 THE COURT: So the parties have stipulated with
7 respect to, in effect, the authenticity of those blog posts,
8 right? Okay. Go ahead.

9 MR. REISS: Thank you, Your Honor. If we could call
10 up the demonstrative that defendants have graciously stipulated
11 to.

12 BY MR. REISS:

13 Q. So the first one we just asked about, Mr. Huppenthal,
14 December 14th, I won't reread it again, that was made December
15 14th, 2010.

16 The next one, which I also just asked you about, that was
17 made on December 15th, 2010, the very next day. And the next
18 one, again, is a day after, December 16th, 2010, and you posted
19 a blog that said: "I don't mind them selling Mexican food as
20 long as the menus are mostly in English."

21 And counsel has stipulated that you made that blog.

22 The next blog is on -- I'm sorry. The next blog is on
23 January 4th, 2011. And you recall, Mr. Huppenthal, that
24 January 4th, 2011 was the very day that you adopted Mr. Horne's
25 finding that the Tucson Unified School District was in

1 violation of 15-112, right? That was your very first full day
2 in office, right?

3 A. Yeah.

4 Q. And on that very first full day in office, I believe in the
5 morning, you wrote: "La Raza means 'The Race. ' It doesn't
6 mean the Mexican race, unless you use it as a shorthand for
7 that. But it's also shorthand for classroom studies that
8 depict America's founding fathers as racists, poisoning
9 students' attitudes towards America."

10 That was on January 4th, 2011, right? The day you adopted
11 Mr. Horne's finding, right? Right?

12 A. Mmm-hmm.

13 Q. The next one. The next one is on October 3rd, 2011. This
14 is during the time that the appeal to the administrative law
15 judge is going on. You wrote, again, as Falcon 9: "The
16 Mexican-American Studies classes use the exact same technique
17 that Hitler used in his rise to power. In Hitler's case it was
18 the Sudetenland. In the Mexican-American Studies case, it's
19 Aztlán."

20 You wrote that on October 3rd, 2011, during the pendency of
21 the administrative law judge proceedings, right?

22 A. I'm assuming you have the timing right.

23 Q. The next one is on January 14th. On January 13th, let's go
24 back down, if we can. January 13th, the books are removed from
25 the MAS classes and put in a box labeled "banned books."

1 On January 14th you wrote as Falcon 9: "No book whatsoever
2 has been banned. Just that MAS skinheads can't run
3 classrooms." That was on January 14th, right?

4 Then on January 15th, the next day, you write, again, as
5 Falcon 9: "Pedagogy of the Oppressed and Occupied America are
6 hateful books and are being taught as belief systems in
7 Mexican-American Studies. The books aren't the problem. The
8 infected teachers are the problem." Right? You wrote that on
9 January 15th, right after the books were removed from the
10 classroom, right? Right?

11 A. And I can go back to the hearing that we had in the Senate.
12 When I laid out Benjamin Franklin's role in advancing
13 African-Americans in the United States, the fact that he was
14 the president of the Abolitionist Society in Pennsylvania,
15 achieving the illegalization of the slave trade in
16 Pennsylvania, the very first state, the fact that he paid out
17 of his very own pocket to build schools for African-Americans,
18 the fact that in the very first Congress, when I laid these all
19 out, if you go back to your transcript that you put forward
20 there, Senator Lopez, you can hear her expressing what you're
21 saying is not the truth. Well, that's the problem.

22 When I say a teacher is infected, the problem is, over at
23 the University of Arizona, they have taught them a history
24 that's not based on facts. These are facts about Benjamin
25 Franklin.

1 Now, there are other facts too that don't paint as good of
2 a picture of him, and I fully welcome people learning that.
3 But if you don't know all of the facts about Benjamin Franklin,
4 you've really been poisoned against America. Because Benjamin
5 Franklin is core to understanding America. He was almost the,
6 the writer of our freedom of religion and freedom of speech.

7 As a publisher, he was the champion of those, which are at
8 the core of all. So when I say an infected teacher, that's
9 shorthand for saying somebody who's learned at the university
10 level a history that isn't all of the facts.

11 It's only that Benjamin Franklin is a racist, comes in and
12 tells these kids that America is a racist because Benjamin
13 Franklin was a racist, and creates this oppressed/oppressor
14 structure, which is in my view toxic.

15 So this is a little bit of a -- you know, when we talk
16 about these quotes, that -- this is a little bit more of the
17 complete picture.

18 When you get into the blogs, it gets pretty snarky, and I
19 look at these and I wish I had spent a little more time editing
20 and persuading, but it's sort of a bare-knuckled brawl out on
21 the blocks.

22 Q. All right. So let me just ask you about the next one.
23 January 23rd, about a week later: "They're having an orgasm
24 over the claim that their book was banned. Now maybe a student
25 will read it." You wrote that blog, right?

1 And on March 8th --

2 A. That's my observation, that nothing more than liberals love
3 than to have a conservative ban a book, so that's why I was
4 adamant that I didn't want to participate in any book being
5 banned. And I, you know, maintain that all the way through, is
6 that it's just simply not the books, it's how they're -- how
7 they're handled within the classroom.

8 You can teach the Bible as literature in a class. I
9 supported the Bible standards. You can deal with extremely
10 controversial material, and a teacher just has to handle it
11 correctly for the student to get value out of it.

12 Q. On March 8th, Mr. Huppenthal, you wrote -- March 8th,
13 2012 -- by the way, this entire time period from January 4th,
14 2011, on through January 2nd, 2015, you're the superintendent
15 of education, right?

16 A. Yes.

17 Q. On March 8th, during that period, you wrote: "Yes, MAS
18 equals KKK in a different color." Right?

19 A. That was a direct reference to the journal article in which
20 you added ethnic studies, a MAS administrator, who said that
21 they were going to racemize these classrooms, and just directly
22 went at what I thought was a highly offensive way to
23 characterize or to structure a class around what I think is a
24 tired construct, the oppressed and the oppressor, with the
25 oppressed being Hispanics and the oppressor being Caucasians,

1 and I think that's toxic and poisonous, and that's a reference
2 to almost directly to that journal article.

3 Q. Finally, Mr. Huppenthal, on May 30th, 2013, you wrote, and
4 this time as "Thucydides." And, by the way, you posted blogs
5 as "Thucydides"?

6 A. Yes, but contrary to Falcon 9, there were other people that
7 used variants of Thucydides, not in the blogs I was posting at,
8 but in other blogs.

9 Q. But this is your blog, right: All these Marxist textbooks
10 are bizarre. Karl Marx was a white European. Why worship him?
11 Curtis Acosta's teaching created vibrancy, but Mexican-American
12 Studies in total is a wasteland, a dead end for students
13 intellectually. The behaviors of teachers in these classrooms
14 are bizarre and wouldn't be tolerated by anyone when exposed to
15 daylight. Notice the subtext here. Curtis is getting rich off
16 this controversy. Is he now one of the oppressors?

17 You wrote that too, right?

18 A. Yes.

19 Q. So, Mr. Huppenthal, I believe it was on June 25th, 2014,
20 you had a press conference, right, in which you apologized for
21 your blogs, right?

22 A. I don't know if "apology" is the right description. I had
23 been battling another public policy issue called Common Core
24 Standards, and I was basically working 18 to 20 hours a day,
25 and had been doing that for months, and I was just completely

1 and totally exhausted. So I wasn't prepared to deal with the
2 controversy over the blogs at that point. I was just sort of
3 physically collapsing.

4 It was -- you know, it was about as stressful as a public
5 policy environment can be to deal with two controversies of
6 such intensity simultaneously.

7 Q. But you did apologize for the blogs, right?

8 A. I viewed it more as apologizing for the distraction.

9 Q. Did you believe that there was nothing to apologize for in
10 these blogs?

11 A. Now I believe -- I've had a chance to sort of get rested
12 and look back at it, and I don't -- I don't apologize for any
13 of it. I would be more temperate. You know, if you know that,
14 you know, you're just not engaged in a bare-knuckled brawl with
15 some of the people who try to be intellectual leaders, you
16 would use a more temperate tone and more graceful language.

17 But I'm a tough kid from South Tucson. I went out to visit
18 my dad at noon, a \$500 house that we built in 1964, and, you
19 know, that's me, you know. I'm sort of a --

20 Q. So you're withdrawing your apology?

21 A. Well, I'm not withdrawing my apology. I'm casting -- you
22 know, I was apologizing for the distraction.

23 And I was complimentary in there of Curtis Acosta. I said
24 his teaching created vibrancy, and I meant that. You know, I
25 liked all those guys, Curtis Acosta and Augustine and Arce. I

1 just thought that the background that they had, I just thought
2 it was inappropriate to use that oppressed/oppressor framework
3 in high school classes and to do indoctrination in those
4 classes.

5 Q. In fact, Mr. Huppenthal, you have not stopped blogging
6 about this controversy, have you?

7 A. No. You know, I resumed blogging after I left office. I
8 enjoy doing it.

9 Q. And just last week, Mr. Huppenthal, you wrote the following
10 blog, did you not? Not reading the whole thing, but it starts
11 out: This has to qualify as one of the most meaningless trials
12 in history.

13 You wrote that blog, did you not?

14 A. Yes.

15 Q. And you also wrote --

16 MS. COOPER: Objection, Your Honor. This is not
17 impeachment. It hasn't been disclosed to us.

18 MR. REISS: It goes directly to animus, Your Honor.

19 THE COURT: The objection is overruled.

20 BY MR. REISS:

21 Q. You also wrote: For conservatives, this trial is a no-lose
22 situation. Even if we lose the trial, we will have a permanent
23 example of why liberals can't be trusted to run so much as a
24 lemonade stand. Bringing the MAS controversy back will cause a
25 few hundred TUSD students of the 47,000 to consume the time of

1 the next TUSD superintendent, almost certainly causing another
2 leadership failure.

3 You wrote that, right?

4 A. Yes.

5 Q. Just last week, right?

6 A. Yes. TUSD has had three leadership failures in a row.

7 They had two superintendents that I know personally and
8 analytically to be among the top five even one percent in the
9 nation. And so I view the entire MAS controversy as something
10 very threatening to TUSD.

11 They just simply -- it just simply isn't going to be
12 helpful to them to bring that controversy back. They've lost
13 15,000 students over the last decade and a half. That is not
14 healthy for Tucson. It's not healthy for TUSD. So I view this
15 MAS controversy as something potentially very threatening to
16 TUSD.

17 MR. REISS: Thank you, Mr. Huppenthal. I appreciate
18 your time and your courtesy.

19 And, Your Honor, I am finished with my examination.

20 THE COURT: All right. Thank you.

21 MS. COOPER: May we ask for a copy of the document
22 that you just read from?

23 MR. REISS: Sure.

24 MS. COOPER: Thank you.

25 THE COURT: All right. Cross-examination.

CROSS-EXAMINATION

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BY MS. COOPER:

Q. Good afternoon, Mr. Huppenthal.

A. Good afternoon.

Q. It's been a long day. Let's start with your background, please. I'd like to work backwards from what you're doing now.

What work have you been doing since you left the superintendent seat of public instruction?

A. I became a certified math teacher, passing the math exam, and using my background as an -- with an engineering degree and an MBA, and I've started teaching classes to at-risk students first at a school for the homeless and then at an at-risk school in South Phoenix.

Q. Are you teaching elementary, middle, or high school students?

A. Elementary students.

Q. You say they're at risk, correct?

A. Yes.

Q. Do you know the ethnic makeup, the approximate ethnic makeup, of the students in your current class?

A. I teach students from the highest crime rate Zip Code in the state, and my class is 50 percent African-American and 50 percent Latino, roughly within plus or minus 10 percent.

Q. That's the class you're currently teaching?

A. Yes.

1 Q. You say you're teaching them math skills. Can you tell the
2 Court a little bit more about what your goals are with respect
3 to these young people?

4 A. Well, when you take a look at the deficits that these
5 students have, my students were two years behind/below grade
6 level at the end of third grade. So coming into fourth grade
7 they're two years below and below standards. They are three
8 years below.

9 So my objective is to create a classroom that can move kids
10 at four years in a single year. So the typical student on the
11 AZMerit test moves 25 points. My objective is to create a
12 class that can move students a hundred points a year.

13 I was able to get three students to a hundred points this
14 year, and the overall average gain was 41 percent higher than
15 the statewide average. But that was disappointing to me. Even
16 though that sounds good, it's not enough to enable these kids
17 from South Phoenix to be able to make it to Stanford, Harvard,
18 and Yale, and that's my goal.

19 Q. Why did you choose to help these students, these at-risk
20 students with ethnically diverse socio-economically challenged
21 background, Mr. Huppenthal?

22 A. This is where I come from. As I mentioned, I grew up in
23 South Tucson in a house that we built for 500 bucks, five
24 brothers and five sisters. We went to school at 12th Avenue in
25 Ajo, just a few miles there. I visited the school at lunchtime

1 and talked to the people there. But I was one of the very few
2 Caucasian students at that grade school. And it's a highest
3 poverty, highest minority, highest crime area in Tucson.

4 Q. To go back to the students you're currently teaching, do
5 you believe that all of these students have the same abilities
6 to succeed as you and your family members and friends?

7 A. I do. And I have had a couple of those students that over
8 the course of the year -- the essence of what I'm doing is to
9 rely on motivation. The human brain needs to be motivated in
10 order to learn, and I was able to get these students, I was
11 able to get five of them to do over 50,000 math problems
12 correctly this year.

13 Q. And are they using software that you developed?

14 A. I begged this company to develop this software for me, and
15 they agreed to it, but the design is mine.

16 Q. And then -- so you're presently teaching fourth graders.
17 And did you teach, did you say, sixth graders before that?

18 A. I taught sixth graders at a school for the homeless in
19 South Phoenix.

20 Q. What was the ethnographic makeup, if you recall, of that
21 class?

22 A. It was roughly one-third African-American and two-thirds
23 Hispanic.

24 Q. And were your math -- was your math program successful with
25 those students as well?

1 A. Their gains were 41 percent above, almost exact what I got
2 this year. And I -- that would be regarded as successful if
3 you just classified it that way, but I didn't regard it as
4 being successful.

5 These students, I'm focused on getting 400 percent for
6 every student because that's the only way that you can create
7 an environment where students from South Phoenix, South Tucson
8 can make it all the way to Harvard, Stanford, and Yale and have
9 a really good chance of being successful there. So we have to
10 do much, much better than we are doing for these students right
11 now for them to have a chance.

12 Q. Are you volunteering your time, Mr. Huppenthal?

13 A. Not just volunteering my time, I'm personally bearing all
14 the expenses of the program, so that it's costing me about
15 3,000 bucks a year. Yes, the answer is yes, I volunteer.

16 Q. So would it be fair say that right now you're volunteering
17 your time to teach Hispanic and African-American students
18 fundamental math skills so that you can help -- they can be
19 more successful and have a better chance of succeeding in high
20 school and moving on to college?

21 A. Oh, absolutely. That's the mission.

22 Q. Now, you were superintendent before you did this. We've
23 talked about that a lot. Can you tell me what your goals
24 were as the superintendent of public instruction of Arizona's
25 1.1 million public school children?

1 A. My goal was to have the highest -- first, to have the
2 highest academic gains in the nation of any state, and we were
3 able to achieve that.

4 From 2011 to 2015, the gold standard for measuring academic
5 achievement of any state is the National Assessment of
6 Educational Progress. So if you take the measure at the fourth
7 and eighth grade level for all states so you can make
8 conclusions at those levels, and if you take fourth grade 2011
9 and then compare it to eighth grade 2015, so fourth graders in
10 2011 would be eighth graders in 2015, Arizona had the highest
11 combined math and reading gains in the nation.

12 And then when you take and break it out by demographic
13 group, African-American eighth graders in Arizona placed number
14 one in the nation. They defeated all other 49 states in math.
15 African-Americans in Arizona have the highest math scores in
16 the nation.

17 Hispanics placed 11th. They had the eleventh highest math
18 scores in the nation. They were up from 35th in 2011. And
19 Hispanics and whites placed sixth. And we didn't do bad in
20 reading either. The rankings were 14th, 12th and 29th in
21 reading.

22 Q. We're talking about the National Assessment of Educational
23 Progress, right?

24 A. Yes.

25 Q. You said that's the gold standard.

1 Was it your goal to increase the student achievement of
2 Arizona's Hispanic student population?

3 A. Absolutely. As I mentioned, I grew up in South Tucson, and
4 went to St. John's Elementary School. My associates there,
5 Luis Rodriguez, Richard Sanchez, Jimmy Ortega, Marcelino
6 Lucero.

7 Marcelino Lucero taught me long division in third grade.
8 He is now a practicing pharmacist. Richard Sanchez, his
9 athletic director was -- I think he's retired now -- athletic
10 director at the Sunnyside School District. Luis Rodriguez went
11 on to be an avionics engineer for Honeywell. Jimmy Ortega went
12 on to be a vocational educational teacher.

13 I know from personal experience that every single one of
14 our Hispanic students can be extraordinarily successful, and it
15 was my absolute mission in life to make sure it happened.

16 And if I talked about the need for students to be fluent in
17 English, that's because personal experience told me that, that
18 fluency in English -- the research says that fluency in English
19 is the number one predictor for success for immigrants and for
20 everybody. It's a better predictor than a high school diploma
21 or college degree.

22 So that sense of urgency that I had was my personal
23 experience with these students. Being with Marcelino Lucero in
24 school and then going to his home and realizing, geez, he knows
25 English as well as I do. When I go to his home, nothing but

1 Spanish was spoken. And so, from personal experience, I
2 realized that these students were able to go on, get their
3 doctorates, become practicing pharmacists, et cetera, because
4 they were -- their knowledge of English.

5 So these personal experiences formed my biases, my urgency
6 that we need to do everything we can every minute of the day to
7 give these kids a chance.

8 Q. Was it your goal as to increase the student achievement of
9 Arizona's African-American students?

10 A. Yes.

11 Q. And Arizona's Native American students?

12 A. Yes. I might say that we -- I spent a lot of time up in
13 the Native American -- one of my proudest days was they had a
14 headline up in the Native American newspapers saying that I was
15 the very first superintendent to visit in 28 years. So I spent
16 a lot of time up there.

17 I succeeded in getting one of the outstanding teachers up
18 at Kayenta named a national vocational education teacher of the
19 year. We had a Native American advisory group, and we were
20 successful at getting a certification program established to
21 allow Native Americans to teach the Native American language in
22 their schools. It would seem like a no-brainer, but that was
23 actually quite challenging to execute and pull off. But we did
24 that, and so for the very first time they have a certification
25 program for Native American languages, which is something

1 that's critical.

2 Just recently they had an occurrence where a well-known
3 Native American wasn't able to run for president of the Navajo
4 reservation because they failed the Native American language
5 test. So we -- we did a lot of work with our minority
6 populations, working really hard to make sure we were opening
7 every door possible.

8 Q. Why was it important to you that Native American students
9 be able to be taught their Native American language in Arizona
10 public schools?

11 A. Well, geez, it almost seems to me like a no-brainer.
12 That's their culture. They -- certainly they ought to be able
13 to teach it. I thought it was -- I thought you could see the
14 signs of crisis when you have a well-known Native American who
15 can't run for president of the tribe because he doesn't know
16 the language adequately. I thought there was a cultural crisis
17 happening, and that was a powerful way to help address it.

18 Q. Was it important to you that only Native Americans be
19 permitted to learn their language and their culture in Arizona
20 public schools, would it be possible for other cultures to
21 learn about their language and their culture in our public
22 schools?

23 A. Absolutely. We, or my African-American advisory group, we
24 had a number of successful educators on there, and we developed
25 an ethnic studies class that was for continuing credit for

1 teachers, and it was just an outstanding class. And they -- my
2 advisory group not only developed it, but the teachers on
3 there, who were highly effective, taught first classes so that
4 teachers could take that African-American ethnic studies class
5 for continuing education credit.

6 Q. So what was the purpose of this? You had several advisory
7 groups, right?

8 A. Yes.

9 Q. African-American, Native American.

10 A. Native American.

11 Q. Latino American.

12 A. Yes.

13 Q. And what were the purpose of these different advisory
14 groups? They were called Hup groups, right, sir?

15 A. Yeah, mmm-hmm. Short for my name.

16 The purpose of these groups was to be as transparent as
17 possible, but also to be -- I view these kind of groups, I've
18 had them my entire public service career. I had them in the
19 legislature, to develop legislation. We were extraordinarily
20 successful there. I ended up doing 212 pieces of legislation,
21 and legislation at its best solves problems with our laws. So
22 I viewed these kind of advisory groups as sort of radar. They
23 identify problems, we sit down, you have their expertise there,
24 you grind away until you solve the problem, then you implement
25 the policy.

1 So, for example, the Native Americans, we identified this
2 problem, we ground away, then we took the proposed policy, we
3 took it to the state court, they adopted it, and then we worked
4 on the implementation to make sure that the accreditation of
5 the teachers was appropriate and that they had the skills in
6 place to be able to teach the classes.

7 Q. So you had a Latino American advisory group with the goal
8 again of having them help you identify problems as well as
9 solutions, correct?

10 A. Yes.

11 Q. You spent 18 years in the legislature, right?

12 A. Yes.

13 Q. You saw a lot of legislation proposed and enacted?

14 A. Yes.

15 Q. Can you tell me whether or not it's common for a piece of
16 legislation to be introduced and enacted in response to a
17 single instance of a particular problem?

18 A. You observe that all the time. It's the squeaky wheel gets
19 the grease. When there's some kind of issue the complaints are
20 arising about, people do a piece of legislation. So that's a
21 very common -- the more difficult thing is to solve a problem,
22 truly solve it, to understand it in its depth and to solve it
23 without creating other problems. That is extraordinarily
24 complex, and I got to be an expert on it over time and was
25 willing to spend the hours that it takes to grind those things.

1 Q. Can you tell us, based on your experience in the
2 legislature, what a "striker" is, please.

3 A. It's -- the way the legislative process works is it starts
4 in the Senate, and if you're in the Senate and then it goes
5 over to the house. Strikers have acquired a bad reputation,
6 because it's a bill that goes over without hearings on the
7 subject matter in the first chamber. So a striker would go
8 over from the Senate to the House, and that's when the subject
9 matter would be put on the piece of legislation. So strikers
10 can result in poorly considered legislation if you aren't
11 careful.

12 Q. Are they common?

13 A. They're very common.

14 Q. Have you in fact used strikers yourself?

15 A. I would do -- I wanted to -- I wanted to be the -- sort of
16 the king of strikers. I wanted to be able to control them so
17 that we got a good review, whatever was on them. So I did a
18 lot of strikers. I would typically do 10 strikers a year, so I
19 would be in position to -- you know, people would need my
20 strikers, and I would be able to look at what they're doing to
21 make sure it was good public policy.

22 Q. Now, before you entered the legislature, you were in public
23 service, you served eight years on the Chandler City Council,
24 correct?

25 A. Yes.

1 Q. And you said you are trained as an engineer?

2 A. Yes.

3 Q. And you have an MBA?

4 A. Yes.

5 Q. You grew up here in South Tucson, you said?

6 A. Yes.

7 Q. And your neighborhood was poor?

8 A. Yes.

9 Q. And ethnically diverse?

10 A. Yes.

11 Q. Can you remember the composition of the neighborhood that
12 you grew up in, the ethnic composition?

13 A. Well, my neighborhood was my school really. We were -- we
14 lived out in the desert, and there weren't too many people
15 around when I was young. So it wasn't so much my neighborhood,
16 it was where I went to school. I guess it really wasn't that
17 ethnically diverse. I was one of the few white kids.

18 Q. What was the ethnicity of the remaining students?

19 A. It was almost all Hispanic.

20 Q. I'm going to talk about your visit to Curtis Acosta's
21 class.

22 MS. COOPER: First of all, I'd like to ask plaintiffs'
23 counsel if they would agree to admit their Exhibit 155, which
24 is the transcript of the video that was presented regarding
25 Mr. Huppenthal's visit to Mr. Acosta's class. This is your

1 exhibit. We're withdrawing our objection.

2 MR. REISS: Yes, the video has been admitted, so I
3 have no objection to the transcript.

4 THE COURT: All right. Ms. Cooper, what number is the
5 transcript?

6 MS. COOPER: PX-155, Your Honor.

7 THE COURT: All right. So without objection, it's
8 admitted.

9 BY MS. COOPER:

10 Q. So you recall your visit to Mr. Acosta's class, right?

11 A. Yes.

12 Q. How did that visit come about?

13 A. When we were having the hearing, one of the students
14 challenged me to visit the class, and so I immediately told my
15 assistant, I said, we're going to go and we're going to visit
16 as soon as the legislative session is over.

17 Q. Did you intend to attend a MAS class that was available or
18 Mr. Acosta's class in particular?

19 A. I don't recall the arrangements. I don't recall anything
20 about the arrangements.

21 Q. You don't recall --

22 A. When it came to those kind of things, I turned it over to
23 Merle, and Merle did all of the work.

24 Q. And who is Merle?

25 A. Merle was my assistant.

1 Q. Is that Merle Bianchi?

2 A. Yes, Merle.

3 Q. All right. You understood that, at least when you got to
4 the class, that that was not a regular class day, right, that
5 it was a shortened period because of testing? Or did you?

6 A. I don't know. I don't have any specific recollection of
7 them telling me anything about the nature of the class that
8 day. I just recall as I was going up the steps there was a guy
9 there with a video camera, and I went over and talked to him.

10 I suggested that he come on in and videotape the class.

11 Q. Let me ask you this: Was it a class where the teacher
12 stood up in front of the teachers and presented a lesson or was
13 it a discussion?

14 A. I viewed it more as the teacher having a discussion. It
15 seemed like all stars day. The president of the school board
16 was there, the director of Mexican-American Studies was there.
17 There seemed like a lot of big-wigs were circling.

18 Q. Well, let's talk about that. So School Board President
19 Judy Burns attended this class?

20 A. You know, that's my recollection, but I'd have to have
21 somebody verify that. But I have the sense that there were
22 other people that were taking an interest in it.

23 Q. Well, I'm showing you Page 2 of the exhibit, and I want to
24 ask you to look at the first highlighted point there. It says:
25 "Board president lady." Does that refresh your recollection

1 that that was the president of the TUSD school board at that
2 time?

3 A. Yes. My main memories are from memories of Mr. Acosta and
4 his interaction with the students. I was sort of viewing the
5 relationship that he had with the students, and I thought it
6 was very positive. I was asking questions of the students that
7 were on either side of me to try and get a sense of how they
8 viewed the class.

9 Q. So what was your view of Mr. Acosta as he interacted with
10 the students during your visit?

11 A. Well, my sense of him just generally was very positive. He
12 presented an almost perfect figure for a classroom teacher. He
13 had an impeccably pressed white shirt on, red tie. He looked,
14 he spoke well, he was articulate. The students obviously had a
15 healthy student-teacher relationship. It's obvious that they
16 respected him.

17 Q. Was your dialogue with the students respectful?

18 A. I thought so. I was trying to challenge them a bit and get
19 a little deeper into their thinking.

20 Q. Did you ask them -- for example, I'd like to direct your
21 attention to the bottom of this page, where it starts: "When
22 you talk about the Chicano perspective," can you look at that,
23 please?

24 A. Yes.

25 Q. And tell me if that's one of the topics that you raised

1 with the students?

2 A. Yes, and I think that reflects what I was trying to do, was
3 to get a discussion going to try and find out what their views
4 were on a variety of things.

5 Q. Did you ask them to tell you something about their
6 perspective of the Chicano tradition?

7 A. I don't know. You know, as I look here at the transcript,
8 it says -- he directly quotes me in asking about that. So I
9 recall we were trying to get a discussion going, keeping it
10 positive and healthy, but challenging. That to me is key, that
11 when I go into classrooms, I tried to challenge the students to
12 get them to think a little more deeply.

13 Q. You want them to think critically, right?

14 A. Yes.

15 Q. Then did you tell them something about your background?

16 A. Yeah. I think, as I look at the transcript here, it
17 refreshes me. I told them about growing up on the south side
18 of Tucson, the fact that I came from an ethnically diverse
19 environment. And I don't know if you can even say the
20 environment I was in was ethnically diverse. It was heavily
21 Hispanic. I felt that was the environment I was in from being
22 very young, and I felt very comfortable in that environment.
23 These were all my friends. And so I don't even know that you
24 can describe my environment as being ethnically diverse. I was
25 the diversity. I was the white kid, but it was mostly an

1 Hispanic environment.

2 Q. Do you recall what the ethnic composition of Mr. Acosta's
3 class was? Was it ethnically diverse?

4 A. My recollection is that it was, that there were Hispanics
5 in there and there were Caucasian kids in there. I didn't get
6 the sense that it was overwhelmingly Hispanic.

7 Q. There were students from several different ethnic groups in
8 that class that day?

9 A. Yes.

10 Q. Now, yesterday --

11 A. And really, my concern with the ethnic studies is not so
12 much about the -- I would have been very comfortable if it had
13 been heavily Hispanic. My concern is about the
14 oppressed/oppressor framework. That's where I'm very
15 concerned. I just view that oppressed/oppressor framework as
16 very toxic. That has been my main focus. I know that's not
17 the focus of 1512, that it mentions other things. I am less
18 concerned about those things. I am very concerned about
19 positive racial relations.

20 Q. You've mentioned the phrase that you find the
21 oppressed/oppressor frame work toxic.

22 A. Mmm-hmm.

23 Q. What do you mean by the fact when you say that that
24 framework is toxic to these students?

25 A. My view is that if students get this idea that "I'm

1 oppressed," that there's other people -- it does a number of
2 things. It gets them thinking in unhealthy ways about that,
3 quote, "oppressor" group. And my observation is, is that all
4 these kids can make it, that there's nobody really standing in
5 their way. But it takes hard work. It takes people helping
6 them.

7 I didn't make it out of South Tucson on my own. I had
8 people that took an interest in me. But part of the reason
9 they took an interest in me is I was working hard, and so they
10 were willing to spend time to help develop me. So I just
11 viewed that as a negative -- a negative kind of force that they
12 don't need in their lives.

13 The famous coach, UCLA Basketball Coach John Wooden, he
14 said it perfectly. He said, "Time spent getting even is better
15 spent getting ahead." And if I had a motto in life, that's
16 "Get to work and get ahead." Don't be thinking about that
17 somebody is holding you back and be wasting time on negative
18 thoughts. Get out there and get working and get ahead.

19 Q. What did you tell these students about their ability to get
20 ahead in life that day?

21 A. I see the quote right here: Every one of you can go on to
22 college. You're all obviously very sharp. I'm just reading
23 off of the -- this is a transcript of what I said. It says:
24 Every one of you can go on to college. You're all obviously
25 very sharp. You can get that college degree, can make a living

1 that probably your parents -- well, maybe not -- you may have
2 parents that are doing quite well, but potentially make livings
3 far exceeding your parents.

4 And people want to know that's the message, that you hang
5 with these students, you get them to work hard. That's what I
6 do in my class. I just tell them you've got to work hard,
7 you've got to make working hard fun for them. That's one thing
8 I liked about Curtis Acosta. Obviously he had the respect of
9 the students and he had the ability to get these students to
10 work.

11 Q. Did you believe that every one of the students in that
12 classroom could go on to college?

13 A. Oh, absolutely.

14 Q. And did you believe they were all very sharp?

15 A. Yes. It was a good discussion.

16 Q. Did you discuss with the students the topic of oppression?
17 Did you ask them about that?

18 A. I don't recall the specifics. But I believe the
19 conversation came up. To this day, I am not sure -- I remember
20 the words ringing in my ears, but either in the classroom or in
21 the Senate hearing, one of the students said: "I never knew I
22 was oppressed until I took this class." And that was -- that
23 was a shockwave for me, hearing that from that student.

24 And I don't know if that quote took place in the Senate
25 hearing, and if it was the young student who invited me into

1 the class, or it took place with one of the students who was
2 sitting next to me in the class. But at some point, one of the
3 students made that statement, "I didn't know I was oppressed
4 until I took this class."

5 Q. Well, do you recall talking with the students that day
6 about the subject of oppression?

7 A. I believe so. But I don't recall the specifics just
8 offhand.

9 Q. Let me ask you to look at the highlighted language here on
10 Page 6 and ask you if that refreshes your recollection as to
11 the discussion that you had with these students regarding
12 oppression, and why you were concerned.

13 A. Yeah. I mean, I told them about growing up. When I was
14 growing up, I can't remember a day when I wasn't hungry. And
15 it always seemed like the refrigerator was always empty. But
16 what I told them, when you see that word "oppressed," that
17 means there is somebody there that has control of your life,
18 that oppressor, and that is somebody to hate and somebody to
19 have a lot of ill feelings that in my mind are wasted energy,
20 they're wasted emotion, and they're potentially destructive
21 too, because they can get you in a mindset that you're not in
22 control of your own life.

23 My personal experience is, from all the students who were
24 around me that I grew up with, is we were all in control of our
25 lives, that if we worked hard, that we could do spectacular

1 things. And I think that's the nature of America.

2 Q. Did you think it was important that the students in this
3 class believed that they were in control of their own lives?

4 A. Oh, absolutely.

5 Q. Did you think that that was as true for the Mexican
6 American students as the Caucasian or African-American or
7 Native American students that might have been there that day?

8 A. Oh, absolutely. I mean, look at all my associates:
9 Marcelino Lucero, a practicing pharmacist; Richard Sanchez, the
10 athletic director for the Sunnyside School District; Luis
11 Rodriguez, an avionics engineer. Every one of us came from the
12 most, you know, downtrodden parts of life, and every one of us
13 went on to success.

14 Q. Did you talk with the students about your concerns with
15 respect to Tucson Unified School District and its academic
16 progress on behalf of the students, minority students, and
17 students of low socio-economic status?

18 A. I believe I might have. I expressed on numerous occasions
19 that I don't think education in Arizona can be successful if
20 TUSD is not successful. And, you know, we have the situation
21 of three failed leaderships in a row, and the nature of those
22 failures are dramatic. John Pedicone and -- I don't know
23 exactly how to pronounce her name, the superintendent before
24 him, Fagen I believe is how you pronounce it. They both were
25 among the top -- easily the top 10 percent and almost certainly

1 the top one percent in leadership personalities.

2 Fagen went on to be a national superintendent of the year
3 up in Colorado. Pedicone, before he had gone to TUSD, he was
4 one in a long line of hugely successful superintendents at the
5 Flowing Wells School District.

6 So it was deeply disturbing that you had leadership talents
7 of that magnitude, and they couldn't handle the factions that
8 were being produced by these various entities that were
9 struggling for control of the culture of TUSD.

10 And the result was it was catastrophic. They've lost
11 14,000 students since the year 2000. It's not good for
12 Arizona, not good for Tucson, not good for TUSD.

13 Q. Why isn't it good for Arizona if TUSD students aren't
14 succeeding?

15 A. I just think that they're a bellwether. When you look up
16 in the Phoenix area, you see the quality of the Mesa School
17 District, there are incredibly good leaders there too, and what
18 you see is a whole series of successes taking place and
19 cultural waves that come out from there.

20 So you see Chandler adopting management techniques that
21 Mesa innovated and brought in. You see other school districts
22 adopting those techniques.

23 You don't see that kind of leadership coming out of TUSD.
24 You see the reverse. You see TUSD with a cost basis. \$60,000
25 more per classroom can't come close to matching the Vail School

1 District, which is operating at \$56,000 less per classroom.
2 And that's comparing like to like, taking low income Hispanic
3 students and their academic gains in TUSD and comparing it to
4 Vail.

5 So it's really very upsetting that TUSD can't get their
6 game together and produce the kind of education culture for
7 advancing their students that Mesa can up in the Phoenix area.

8 Q. Is TUSD one of the larger school districts in Arizona?

9 A. Yes. It's the -- at least it used to be the second
10 largest. It's been shrinking so much that it may no longer be
11 the second largest.

12 Q. But it's among the larger?

13 A. It's among the largest. I believe they have somewhere in
14 the neighborhood of 44,000 students.

15 Q. Do you believe a majority of those students are
16 Mexican-American?

17 A. I believe that's the data, but I would have to go back and
18 refresh myself on it.

19 Q. Can Arizona students succeed if one of its largest school
20 districts isn't succeeding for its students?

21 A. You know, we're doing pretty well. The academic gains,
22 being number one in the nation, it's not bad. But we really
23 need for TUSD to get their game together and to move forward.

24 Q. Does TUSD need to get its game together for its
25 Mexican-American students if it's going to move forward?

1 A. Oh, absolutely.

2 Q. Was that one of your goals as superintendent, to make sure
3 that districts like TUSD could get their game together for all
4 of their students so they could move forward?

5 A. Yes. We established within the Department of Education,
6 the 500 employees there, an absolute culture of service. We
7 measured every single division, measured customer satisfaction.
8 So we were there to serve the TUSD district.

9 And if you go back to the press release that the
10 plaintiffs' counsel referred to, when we issued that first
11 press release on Tom Horne's finding, we were effusive in
12 saying we stand here ready to help to repair the ills of the
13 MAS, Mexican-American Studies classes, and to get them moving
14 forward.

15 Q. It was one of your goals, to help TUSD help its
16 Mexican-American students, right?

17 A. Yes.

18 Q. I want to talk, just ask you a little bit more about the
19 people who attended that class and see if you recall. We
20 talked about the board president, Judy Burns. Do you recall
21 Mr. Sean Arce was in that class?

22 A. No, I don't recall directly if he was in the class, but he
23 may very well have been.

24 Q. Do you remember an assistant superintendent, Dr. Isquierdo?

25 A. I do not have a specific memory of that. I think I might

1 have read at some point that she was there in the class.

2 Q. What about Augustine Romero, was he there?

3 A. Yes, I remember him quite distinctly.

4 Q. And do you recall a principal Abel Morado attended that
5 class?

6 A. I don't have a specific memory.

7 Q. Did you witness Curtis Acosta teaching his students any
8 kind of lesson?

9 A. I don't recall the specifics. I remember a period of time
10 in which there was a discussion going on with him and the
11 students, but I don't recall the specifics of it.

12 Q. Did you witness any troubling materials during your visit
13 to this classroom?

14 A. The materials that I was concerned about were -- there was
15 a poster of Che Guevara up on the wall, and then there were
16 statements made by Dr. Romero about Benjamin Franklin that I
17 found very troubling.

18 Q. Why did it trouble you to see a poster of Che Guevara on
19 the wall?

20 A. I have studied his history in Cuba, and very exact
21 documentation of the fact that he was a part of the slaughter
22 that took place. 14,000 Cubans were executed, basically shot
23 in the back of the head for nothing more than what we would
24 refer to as First Amendment speech rights, and that's been
25 thoroughly documented.

1 So, to me, it was like having a mass murderer, a poster of
2 a mass murderer up on the wall.

3 Q. Would it be sort of like putting a poster of Adolf Hitler
4 on the wall?

5 A. You know, I've learned to be careful about those kind of
6 comparisons. It would be -- it's pretty serious to have
7 somebody with that record, on which the historical record is so
8 defined, to have their poster up on the wall and for students
9 not to understand really what you're talking about there and
10 what the dangers are for society.

11 Q. Is it wrong for teachers to teach their students about
12 Che Guevara or Adolf Hitler?

13 A. Oh, absolutely not. As a matter of fact, I think they
14 should. They should know all the facts. If they want to view
15 him as a revolutionary hero, after they know he participated in
16 having 14,000 people shot in the back of the head, that would
17 be -- that could be their decision. But I think they ought to
18 know the whole story about him.

19 Q. Was your concern that the poster on the wall represented an
20 endorsement of Che Guevara?

21 A. Yes.

22 Q. Let's talk a little bit about the Tucson community's view
23 of the MAS program. When you were in the legislature or as
24 superintendent, did you hear from members of the Tucson
25 community about the MAS program?

1 A. A little bit. But mostly indirectly. I think others were
2 hearing more than I was. I did not view myself as an
3 ideological legislator. I loved solving problems, technical
4 problems with state law. So I loved getting 30 people in a
5 room, sitting down, identifying problems, developing
6 legislation to very carefully solve those problems, and then we
7 would move those through. So I tried to steer clear of direct
8 involvement in controversial legislation.

9 Q. When you were superintendent, did members of the Tucson
10 community talk to you about their views with respect to the
11 Mexican-American Studies program here in Tucson?

12 A. There were -- there were some e-mails, but I got the
13 general sense that those e-mails were going to other people in
14 the department.

15 Q. Did you ever hear from anyone who opposed the TUSD MAS
16 program?

17 A. Oh, yes.

18 Q. Were you aware that there were -- that there was strong
19 opposition in at least some circles to the TUSD MAS program?

20 A. Yes. And I came to understand that that was the TUSD
21 problem, is that it wasn't enough, it wasn't going to be enough
22 to just say you're out of alignment, get back in alignment,
23 that they had their own internal problems, that this firestorm
24 was much more intense within the Tucson community than it
25 was -- than I was seeing with direct e-mails.

1 And I got a little bit of a sense as I campaigned for
2 superintendent that these concerns that spread across the state
3 like wildfire. So they were everywhere as I went around.

4 Q. Were you familiar at all with the views of any members of
5 the governing board at TUSD regarding the MAS program?

6 A. I was aware that some of them were concerned about it and
7 even some of those that might be regarded -- my general sense
8 was there was an unhealthy split on the TUSD board, that they
9 couldn't get their game together enough to somehow overcome
10 their differences and act in concert.

11 When you look at successful school districts, they -- the
12 school board members come together so that they can operate as
13 a team. But I got a sense that they were hopelessly
14 fragmented, that you had some people in the middle, and those
15 people in the middle developed separately their own deep
16 concerns about Mexican-American Studies. And that also became
17 a problem for them to sort of bring themselves together and
18 heal this thing. Some of the board members themselves
19 developed deep, deep concerns about the studies.

20 Q. Can you tell me who Dr. Mark Stegeman is?

21 A. He's a member of the TUSD board.

22 Q. Was he president of the governing board at this time?

23 A. You know, I would have to have somebody remind me of that.
24 It rings a bell, but I wouldn't want to state it.

25 Q. Did he communicate to you about his views regarding the MAS

1 program?

2 A. Either directly or indirectly, we came to understand that
3 he had concerns about the program.

4 Q. And what were the concerns that you understood that
5 Dr. Stegeman had about the program?

6 A. I think that he began to feel like it was indoctrination,
7 that there were elements of indoctrination in it. I'd much
8 prefer that he represent his own views, but I'm just --
9 directly from different communications that I was observing,
10 that's the sense of it that I got.

11 Q. Just what you recall. Do you know whether Dr. Stegeman
12 ever visited any TUSD MAS classes?

13 A. I believe that he did, but I can't say from specific
14 knowledge.

15 Q. Did he ever tell you anything about his visit?

16 A. At one point I heard him expressing some current concerns
17 about the -- some of the techniques that were in use in the
18 classrooms that appeared to be indoctrination-type activities.

19 Q. Do you recall what techniques that he labeled as possibly
20 indoctrination-like?

21 A. You know, I don't want to go -- I don't want to go there.
22 I think he's got enough troubles being on the board right now.
23 I don't want to give him anymore.

24 Q. We only want to ask you what you recall.

25 Let's talk a little bit more about the enactment of HB2281,

1 the bill that became A.R.S. 15-112. Now, you were chair of
2 Senate Ed at that time, in 2010, right?

3 A. Yes.

4 Q. And you attended a hearing in April regarding this bill,
5 correct? You presided over it, didn't you?

6 A. Yes.

7 Q. Do you recall that hearing?

8 A. Generally.

9 Q. Can you recall what the focus of the debate was with
10 respect to HB2281 that day?

11 A. I think the focus sort of became the TUSD school district,
12 that there were people there from TUSD testifying, as well as
13 Superintendent Horne. So the focus sort of became the TUSD
14 Mexican-American Studies program.

15 Q. Was the focus on the classes or was the focus on
16 Mexican-Americans?

17 A. The focus was on the classes.

18 Q. Do you recall anyone talking about Mexican-Americans as an
19 ethnic group during that hearing?

20 A. Not that I can recall.

21 Q. Do you recall any discussion of any particular ethnic group
22 that day?

23 A. No.

24 Q. Do you recall any discussion of undocumented immigrants at
25 the hearing that day?

1 A. Not to my memory.

2 Q. You don't recall any discussion of SB1070?

3 A. No, I don't recall.

4 Q. Now, you authored an amendment that delayed the effective
5 date from -- on that HB2281, correct?

6 A. Yes.

7 Q. As a legislator, can you tell me what the effective date of
8 that statute would have been absent your amendment?

9 A. It would have been before the election. I moved it to
10 after the election.

11 Q. It would have been 90 days after the last day, after
12 session closed, right?

13 A. Yes.

14 Q. And that generally would fall sometime in August, depending
15 on when the session ends?

16 A. Yes.

17 Q. And 2010 was an election year, right?

18 A. Yes.

19 Q. And so you moved the effective date from before the
20 election to after the election?

21 A. Yes.

22 Q. Why did you do that?

23 A. I felt that I wanted to take the politics out of any
24 decision that was made regarding the class so we could get past
25 the election. The temperature drops about 90 degrees, and so

1 it could be made when heads are a little cooler.

2 Q. Were you concerned that if the statute went into effect
3 before the election that there might be an enforcement process
4 just for political gain?

5 A. I think that was probably part of the concern, yes.

6 Q. Were there other concerns that motivated you to introduce
7 this amendment?

8 A. I just -- I just felt that moving it after the election
9 would take the politics out of it. So if you considered it
10 after the election, you could just consider it based on the
11 merits, and the next election would be two years away.
12 Everything would cool down quite a bit.

13 Q. You also authored an amendment that clarified the
14 superintendent of public instruction had authority along with
15 the state board of education with respect to enforcement of
16 this bill, right?

17 A. Yes.

18 Q. When you proposed that amendment, did you see that as an
19 amendment that would give you the authority to enforce this
20 statute?

21 A. You know, as I answer this, it's hard to say no, I didn't
22 visualize it as being me. It was -- a lot of times, the way I
23 did amendments, they were technical amendments. Superintendent
24 Horne and Representative Crandall were sort of at each other's
25 throats. They didn't like each other too much, and so they got

1 into a dispute over these issues.

2 So when that bill came over to the Senate, I just offered a
3 clarifying amendment that sort of cleaned it up and
4 reestablished it as the way I think it was originally, with the
5 superintendent would have that power as well as the state
6 board.

7 Q. Was it your understanding that -- is it Representative
8 Crandall wanted to keep authority away from Superintendent
9 Horne?

10 A. That's my sense of it. I would have to go back and
11 reestablish it. But, you know, I have that memory. Hopefully,
12 it's correct, but the two of them had a very difficult time
13 getting along.

14 Q. Is it correct to say that the purpose of your amendment was
15 to give you authority to enforce that statute?

16 A. No.

17 Q. In fact, you knew that you might lose the election and that
18 you could be giving your primary opponent or a democratic
19 candidate that authority, right?

20 A. I was 11 and 0 in elections. I was pretty confident.

21 Q. Very good.

22 Now, the state board of education is the other agency that
23 has enforcement authority here, right?

24 A. Yes.

25 Q. And you're familiar with that agency, right?

1 A. Yes.

2 Q. Is that a big agency?

3 A. No. And they aren't really prepared or equipped to take
4 this kind of executive action. It really wasn't appropriate
5 for them to be named the entity to do it. So you would have
6 been in a position where the superintendent would have had to
7 take it as an action to them, and then they would have had to
8 vote on it. So it would have been very -- it would have just
9 been difficult and messy.

10 Q. And you were familiar with the resources of the state board
11 as an agency because you were an ex officio member of that
12 board as the superintendent of public instruction, right?

13 A. Yes.

14 THE COURT: Ms. Cooper, why don't we take our
15 mid-afternoon recess.

16 MS. COOPER: Excellent. Thank you.

17 THE COURT: Mr. Huppenthal, you may step down. I have
18 a sneaky feeling we might be getting close to the end of your
19 testimony. We'll see. We'll stand at recess at this time.

20 MS. COOPER: Is that a hint, Your Honor?

21 THE COURT: No. It's a prediction.

22 (A recess was taken from 2:59 p.m. to 3:25 p.m.)

23 THE COURT: All right. Let's be seated. Let me see.
24 We're on the cross still, right?

25 MS. COOPER: We've really combined direct and cross,

1 Your Honor, and I don't foresee that we're going to have a
2 problem that we would exceed our allotted four days. We'll
3 just call this our direct, Your Honor.

4 THE COURT: All right. Anything further right now?

5 MS. COOPER: Yes.

6 THE COURT: Go ahead.

7 MS. COOPER: All right.

8 BY MS. COOPER:

9 Q. HB2281 is the bill that became A.R.S. 15-111 and 112,
10 right?

11 A. Yes.

12 Q. All right. I've put up here a representation of that.
13 It's Plaintiffs' Exhibit 18, which is an admitted exhibit, but
14 we're using a copy we've typed that's a little bit easier to
15 see. This is a bill that establishes standards by which ethnic
16 studies classes are judged, right?

17 A. Yes.

18 Q. Does it apply to all ethnic studies classes?

19 A. Yes.

20 Q. Does it mention Mexican-American ethnic studies classes?

21 A. No.

22 Q. Does it prevent teaching students about oppression?

23 A. No.

24 Q. Does it prevent teaching students about incidents of
25 oppression that may have affected members of their ethnic

1 group?

2 A. No.

3 Q. I want to direct your attention to B, which I believe is
4 the portion of the statute that addresses the consequences for
5 non-compliance, and ask you whether or not this bill gives the
6 superintendent of public instruction of the State Board of
7 Education the authority to terminate a program?

8 A. No, it does not.

9 Q. The penalties for non-compliance withholding of up to 10
10 percent of state aid?

11 A. No, because they have the opportunity to correct the
12 problems with the curriculum.

13 Q. And if they correct the problems with the curriculum, what
14 is the superintendent of public instruction required to do with
15 any monies that have been withheld?

16 A. To reimburse them.

17 Q. Let's move on to your first day in office. Was that a busy
18 day?

19 A. Yes.

20 Q. Your first day in office, on January 3rd, 2011?

21 A. Yes.

22 Q. Were there a lot of issues that you had to address that
23 first day?

24 A. Yes, and there were a lot of ceremonial things going on.

25 Q. Very busy first week probably?

1 A. Yes.

2 Q. And so is one of the things that you learned, however, that
3 former Superintendent Horne has issued a finding with respect
4 to TUSD's MAS program?

5 A. Yes.

6 Q. Did your staff brief you about Mr. Horne's finding?

7 A. Yes. I'm not sure at what point, but they pointed out that
8 there were some technical issues involved with his -- with his
9 finding. But I think that came at a later date.

10 Q. I want to ask you, so when you came into office, you were
11 aware of TUSD's MAS program based on your visit to the class
12 and your time in the legislature, right?

13 A. Yes.

14 Q. Had you developed concerns about what was being taught in
15 the MAS program by that time?

16 A. Yes.

17 Q. So your staff briefed you on the finding. Can you recall
18 which members?

19 A. You know, thinking back on it now, the recollection I have
20 is that the public information office wanted to issue a release
21 concerning the finding, but I have very indistinct memories of
22 the things taking place on that day.

23 Q. Do you recall whether Stacey Morley, who was your director
24 of policy and government relations at that time, briefed you
25 with respect to this finding?

1 A. I think that came at a little bit of a later date, and she
2 had problems with the technical issues associated with it. She
3 felt that because of the timing of the finding versus the
4 language of 15-112, that there were just technical challenges
5 associated with the finding.

6 Q. Would it be your recollection that Ms. Morley probably told
7 you this within the first several days you were in office?

8 A. I think, you know, her mind was like a steel trap, and so
9 I'm sure that -- I am sure that it didn't take too long. It
10 was some time within the first three weeks that that discussion
11 took place.

12 Q. Can you describe again the problems that Ms. Morley -- the
13 potential problem Ms. Morley identified with Mr. Horne's
14 findings?

15 A. As best I can recall in putting it together right now, he
16 was issuing a finding about classes that weren't taking place
17 as he was issuing his findings. So literally the TUSD classes
18 weren't in session, as I understand the logic of the argument,
19 that the classes weren't in session and he was issuing a
20 finding about them.

21 Q. Do you know whether Ms. Morley had any concerns about the
22 timing of the finding with respect to the effective date of the
23 statute?

24 A. I don't recall those. I more have a mental image of
25 finding -- of having a problem with issuing the finding on

1 classes that weren't in session.

2 Q. Do you recall whether that was a problem that was
3 sufficient to make it difficult to enforce Mr. Horne's finding?

4 A. I think the discussion with Ms. Morley was that we were
5 going to have to set the finding aside, and we were going to
6 have to do our own investigation. So I think that was the gist
7 that I got from, as I recall, from Ms. Morley.

8 Q. Can you tell -- so Ms. Morley was your director of policy
9 and government relations?

10 A. Yes.

11 Q. Can you tell us your professional experience with
12 Ms. Morley.

13 A. She had an encyclopedic knowledge of the education
14 statutes. She literally could -- it was almost unbelievable.

15 Q. Had she been a staffer on the Senate side while you were in
16 the legislature?

17 A. Yeah. She had been a long-time staffer who was literally
18 writing all the statutes, but unbelievably knowledgeable. And
19 she could just recall it, just any -- almost, you know, a
20 thousand pages. It seemed like she had the whole thing
21 memorized.

22 Q. Now, so she expresses this concern, and you formed the
23 intention that the finding needs to be set aside; is that what
24 you said?

25 A. Yes.

1 Q. Did you in fact set aside the Horne finding?

2 A. Yes, and I liked us going to that position, because I felt
3 like it would give TUSD that whole semester to clean up their
4 act, plus the summer, so they had to be ready to go and they
5 needed to do whatever hearings they were going to have with
6 their school board, so it seemed like they would be able to get
7 their act together and get this all done in time for the fall
8 semester. So I liked the nature of the timing of it.

9 Q. Did you know who the superintendent of public instruction
10 was at TUSD at the time that you came into office?

11 A. There was a transition from Liz Fagen to John Pedicone, and
12 I'm trying to recall exactly when that took place, but I
13 believe at that time period that we were talking about John
14 Pedicone. But, you know, I don't recall exactly when that
15 transition from one to the other took place. But they were
16 both -- they were both superstar superintendents.

17 Q. Was Dr. Pedicone familiar to you?

18 A. Yes.

19 Q. What did you know about Dr. Pedicone?

20 A. He had come from a long line of superintendents at the
21 Flowing Wells School District. The Flowing Wells School
22 District had been named in quite a number of studies as being
23 two standard deviations above the national mean for academic
24 gains. And when you went in there and you looked at their
25 school board, just the whole education culture that they

1 produced in Flowing Wells, he was clearly a superstar education
2 culture, and he was somebody who had helped create that and
3 drive that culture, both as an assistant superintendent within
4 Flowing Wells and then as superintendent.

5 So I felt if anybody could get the job done in TUSD, that
6 it would be him. You know, when he -- when that culture took
7 him down, I really got pretty depressed about the prospects for
8 TUSD.

9 Q. What did you expect when you came into office? You have
10 this finding, technical problem. At that point, what did you
11 hope would happen with respect to the Mexican-American Studies
12 classes in TUSD?

13 A. My anticipation, just reading straight out of the statute,
14 was that they would take the actions necessary to fix it.
15 That's what you do in public policy. When there's a complaint,
16 if somebody calls you up and says there's a pothole over on Elm
17 Street, you go over to the pothole and you fix it, and you fix
18 it in a way that it doesn't become another pothole.

19 So you sit down and you figure out why is everybody all
20 riled up, and you do -- get everybody in the room and you
21 figure it out and you heal it.

22 I just didn't fully comprehend the depth of the factions
23 and the power struggles going on within that -- within that
24 school district.

25 Q. Did you think that the way that TUSD would have to fix the

1 problem with its classes would be to eliminate them?

2 A. No.

3 Q. Did you think that the way that TUSD would have to fix the
4 problem with its classes would be to eliminate classes that
5 taught Mexican-American students about culture and history and
6 literature related to their background?

7 A. No. As a matter of fact, you know, I, through my advisor
8 groups, developed ethnic studies classes for teachers, so in a
9 sense, we had done the drill. We knew exactly how you could do
10 this and produce a high-class product.

11 Q. You decided that an investigation was necessary, you said,
12 right?

13 A. Yes.

14 Q. Did you undertake to conduct that investigation yourself?

15 A. No. We were really blessed to have Elliott Hibbs come to
16 work for us. He was just really a superstar administrator who
17 had worked in all kinds of situations and been spectacularly
18 successful at every one of them.

19 We also had Kathy Hrabluk, who was just an unbelievable
20 education leader. And the two of them, Elliott Hibbs'
21 organizational skills and her encyclopedic knowledge of
22 education curriculum and education science, were just a very
23 powerful combination.

24 And so turning it over to them, the whole thing, the
25 analysis and everything, I felt very confident in their ability

1 to handle it.

2 Q. Had Elliott Hibbs run several agencies for the State of
3 Arizona?

4 A. He was absolutely amazing. He took the welfare agency, and
5 they had been literally ranked Number 52 in the nation, behind
6 Guam, and he took them to the top 4 in processing quality, did
7 a similar thing for Welfare to Work, spectacular stuff at the
8 Department of Administration.

9 He and I had been familiar with each other because I passed
10 performance legislation back in 1993, and he was using that as
11 a part of his management techniques. But he was very good at
12 everything he did.

13 Q. Had he been appointed to head agencies by democratic
14 governors?

15 A. He had been appointed by both Democrat, and I remember Rose
16 Mofford coming up to me and giving me a big hug and she said,
17 "You've appointed my very good friend Elliott," and she said,
18 "Thank you, you're in good hands."

19 Q. And for the benefit of our New York colleagues, Rose
20 Mofford was a Republican governor of Arizona, correct?

21 A. She was a Democrat.

22 Q. Oh, she was a Democrat. That's terrible on me. And
23 Republicans had appointed him?

24 A. Yeah. He had been appointed by both sides of the aisle.

25 Q. All right. And was he a partisan figure?

1 A. No, he was pretty liberal. So was Kathy Hrabluk. I had a
2 lot of liberals working for me.

3 Q. Was he political in his orientation towards his work?

4 A. No, not at all.

5 Q. I want to talk with you a little bit about your awareness,
6 TUSD's student achievement at the time. Were you aware of
7 TUSD's student achievement either as superintendent of public
8 instruction or as a member of the legislature?

9 A. Yes.

10 Q. And how did TUSD's student achievement compare to other
11 similarly situated districts?

12 A. You know, because they served a heavily minority
13 population, the onus is on them. As I mentioned with my
14 students, 41 percent above the statewide average in gains is
15 not nearly good enough, and we're targeting 400 percent above
16 the statewide average, and so they -- they were right at the
17 statewide average in their gains. And you can't make it -- it
18 won't happen.

19 When your average for academic gains for minority and
20 students of poverty and minority students, it is not going to
21 happen for those students. You've got to be much, much higher
22 than the average gain. And so I was aware that their academic
23 gains were mediocre.

24 Q. And you're familiar as the superintendent of public
25 instruction with Arizona's school accountability system that

1 grades schools on an A to F scale, aren't you?

2 A. Yes.

3 Q. So, just like class grades, A is good and F is bad, right?

4 A. Yes.

5 Q. And are you aware of whether or not there were an unusual
6 number of TUSD schools that had A grades or D grades?

7 A. I don't recall specifically. I myself don't really use the
8 letter grade system for analyzing school results. I focus on
9 core metrics, the academic gains and scale scores, and the
10 percentage of parents who rate their child's school either an
11 A, or excellent, when given the choice of excellent, good,
12 satisfactory, or poor, and the percentage of teachers who rate
13 their school an excellent place to teach. So that gain metric
14 and those others are the most scientific way of looking at the
15 performance of a school district and the individual schools.
16 The letter grade system has distinctive shortcomings to it in
17 analyzing results.

18 Q. Are you familiar with the phrase "achievement gap"?

19 A. Yes.

20 Q. As applied to education?

21 A. Yes.

22 Q. Could you define it very briefly, please.

23 A. It's just, simply, if you take my fourth grade students,
24 it's the gap between where Caucasian students are at and where
25 Hispanic students are at or Caucasian students and

1 African-Americans. So it's that -- it's that gap.

2 Q. Was it one of your goals as the superintendent of public
3 instruction to close the achievement gap?

4 A. It was my goal to reverse it. It's my goal as a teacher to
5 reverse it. I went out to Sunnyside at lunchtime. I sat down
6 with one of the administrators to brief him on my project, and
7 they've been following it very closely.

8 My goal is to have Sunnyside not only match Catalina but to
9 defeat them academically to reverse it.

10 Q. By teaching these students their fundamental math skills?

11 A. To motivate them to do in enormous amounts of work and have
12 fun doing it and to make spectacular progress.

13 Q. I'm going take you back to that first week and just ask you
14 a couple of questions about the press release. This is
15 Plaintiffs' Exhibit 60 that's already admitted and that you
16 discussed at length.

17 I just want to draw your attention to the language at the
18 bottom, in the last two paragraphs. Are you extending to TUSD
19 an offer to help them come into compliance?

20 A. Yes. Right from the get-go with our very first -- the very
21 first press release. When we set aside the Horne finding, we
22 were very positively talking about our willingness to be of
23 assistance to bringing them into compliance.

24 Q. Are you expressing concern about their failure to help
25 their minority students succeed?

1 A. Yes.

2 Q. In fact, if we look to the last page, do we see that you've
3 stated that poor education consigns minority students to a
4 lesser future?

5 A. Yes.

6 Q. Was that your concern --

7 A. Yes.

8 Q. -- for students at TUSD?

9 A. Yes.

10 Q. Now, Mr. Horne's finding mentioned other ethnic studies
11 programs, right?

12 A. I would have to look at it again to --

13 Q. And are you aware that there are other ethnic studies
14 programs at TUSD?

15 A. Yes.

16 Q. Are you aware of other ethnic studies programs in other
17 schools throughout the State of Arizona?

18 A. Yes, numerous places.

19 Q. Have you ever received any complaints about any other
20 ethnic studies program --

21 A. Never.

22 Q. -- at a public school in Arizona?

23 A. No.

24 Q. Are you familiar with the name Paulo Freire Freedom
25 Schools?

1 A. I believe that's the name of the charter schools that were
2 mentioned by the plaintiffs in their cross-examination.

3 Q. Did you ever receive any complaints about what was being
4 taught at the Paulo Freire Freedom Schools?

5 A. Not only did I not receive them, I went out and did pretty
6 extensive searches to find out if they existed in some other
7 realm and I wasn't ware of them, and I could find no evidence
8 that anybody was complaining about the ethnic studies at those
9 schools.

10 Q. I want to put in front of you what's been marked as
11 Defendants' Exhibit 527. This has been admitted already.

12 Is that a letter -- this is the second page. Is that a
13 letter from you to Dr. Pedicone dated February 24th, 2011?

14 A. Yes.

15 Q. Are you in this letter extending the period of time in
16 which TUSD has to bring its classes into compliance by another
17 45 days?

18 A. Yes.

19 Q. Does that effectively bring it through the end of the
20 semester?

21 A. Yes. And that was my thinking, is that that would give
22 them the whole semester to heal themselves, plus essentially
23 the summer, because it would -- it got them into the summer.
24 And then they would be able to take the summer, too, to get it
25 all finalized and finished and ready to go.

1 Q. Because here in Arizona, classes end about the middle of
2 May, right?

3 A. Yes. Middle of May, end of May. Third week.

4 THE CLERK: I'm sorry, Ms. Cooper, I don't show that
5 as being admitted.

6 MS. COOPER: Can we deal with it -- do you have any
7 objection to that document being admitted, 527? It was the
8 letter from the February 2nd, 2011. I believe it would be on
9 the list of documents that we would provide as a stipulation.
10 I should have clarified.

11 THE CLERK: Thank you.

12 MS. COOPER: Is that sufficient for your purposes?

13 MR. REISS: No objection, Your Honor.

14 BY MS. COOPER:

15 Q. Let's go back to the investigation. You appointed Elliott
16 Hibbs, whom we've discussed, and Kathy?

17 A. Hrabluk.

18 Q. Who is Kathy Hrabluk?

19 A. She was one of the associate superintendents, and she had
20 originally been appointed to her position by Tom Horne, and
21 before I came over to the department, I visited with her and
22 questioned her for about three hours on a whole variety of
23 curriculum and reading.

24 And she just simply was unbelievable in terms of education
25 science, educational knowledge, and I had witnessed her

1 previously conduct various conferences and seminars for
2 teachers and observed those conferences and seminars in action.
3 And they were just really awesome, high-powered things that the
4 teachers were getting a lot of value out of, and she was doing
5 them correctly, bringing the right education science in all
6 different number of realms, be it reading, you name it. So
7 just simply a spectacular educator and education leader.

8 Q. Did Kathy Hrabluk play a role in your department's
9 implementation of what were known as the State's Common Core
10 Standards?

11 A. Yes.

12 Q. What are the Common Core Standards, briefly.

13 A. They were a set of standards that were put in place in the
14 2008 to 2010 time frame across the nation that were -- they
15 were called the Common Core, and they were designed so that all
16 the states would have similar objectives for teaching students.

17 Q. Why was it important for you to implement the Common Core
18 Standards in Arizona?

19 A. The standards have been very challenging nationwide.
20 During the time period of the implementation of the Common Core
21 Standards, math scores went down for the first time ever, ever,
22 since they've been first started calculating in 1977. Reading
23 scores, which had been on an upward trend, stopped going up.

24 What we were able to do in Arizona is we were -- we were
25 able to understand how dangerous these standards could be,

1 particularly for students -- poverty and minority students.

2 And to counteract some of the potential negative effects of
3 these standards on education, we conducted, despite having
4 almost no funding, the -- we conducted over 330 seminars and
5 webinars and conferences and training episodes for teachers on
6 the standards, and we converted them from a totalitarian
7 mindset of "we're doing this to you" to one of, okay, you're
8 the teachers and you're going to be doing this. So instead of
9 the teachers having the training done to them, the training was
10 done by the teachers.

11 So we brought in teachers, and we trained them how to make
12 these standards of service and to make them not something that
13 was sucking power out of the classroom. It was really an
14 awesome performance that's never been acknowledged. Over 330
15 trainings that went on.

16 Nationwide, teachers opposed this Common Core Standards 5
17 to 4. In Arizona, we ended up with teachers supporting those
18 standards 8 to 1, and we were one of the states that were able
19 to take that period of time, and we were number one in the
20 nation in gains in part because we did not suffer the damage
21 that other states did due to the improper implementation of
22 standards.

23 So when Kathy Hrabluk comes here, you ought to all say
24 thank you, because what she did and what Elliott Hibbs did was
25 simply stunning and amazing. They organized all those seminars

1 and conferences by pennies on the dollar compared with what
2 other states did. It was an amazing performance.

3 Q. Did the implementation of the Common Core Standards in this
4 manner in Arizona help you achieve your goal of raising student
5 achievement for all of Arizona's public school students?

6 A. I believe it was a part of our success, yes.

7 Q. Then you had -- one other administrator came in a little
8 bit later to assist with the investigation, correct?

9 A. Yes.

10 Q. That was John Stollar?

11 A. Yes.

12 Q. And was John Stollar also an experienced teacher,
13 principal, and administrator?

14 A. Yes.

15 Q. All right. And did you then turn the investigation over to
16 Elliott and Kathy and John Stollar?

17 A. Yes.

18 Q. Were you -- did you monitor or supervise that
19 investigation?

20 A. Very lightly.

21 Q. Did you tell them what result to reach?

22 A. No.

23 Q. Did you tell them how to conduct their investigation?

24 A. No.

25 Q. Did you tell them to choose an auditor as a method of

1 conducting their investigation?

2 A. No.

3 Q. Were you involved in the selection of the auditor?

4 A. No.

5 Q. But you did understand that the purpose, the goal with an
6 auditor was to find a disinterested party to help collect
7 information?

8 A. Yes.

9 Q. Did you understand that the -- even though the department
10 was employing an auditor to help it in its process that, in
11 fact, a decision with respect to whether or not TUSD's program
12 violated the statute rested with you and not the auditor?

13 A. Yes.

14 Q. That was the -- that was your statutory responsibility as
15 superintendent of public construction, right?

16 A. Yes.

17 Q. And it couldn't be delegated.

18 So at this point, by this point now, January 2011, you
19 purchased and read many of the materials being used in the MAS
20 program, right?

21 A. Yes.

22 Q. And you developed concerns that we've discussed already
23 regarding them.

24 A. Mmm-hmm. Yeah.

25 Q. All right. So the Cambium audit takes place, and we

1 discussed at length yesterday that audit. I'd like to ask you
2 about a few more parts of it.

3 MS. COOPER: I'm using -- this is a document that we've
4 stipulated that can be admitted. It's Plaintiffs' Exhibit 93.
5 I am using a different version that was produced by plaintiffs
6 just because it's an easier to read copy. Okay? It's got your
7 Bates numbers on it though. I think it came directly from
8 Cambium.

9 BY MS. COOPER:

10 Q. You looked at the audit, right, when it came in?

11 A. Yes.

12 Q. And you were briefed on it as well?

13 A. Yes.

14 Q. So this is the cover page of that audit that you recall?

15 A. I don't know that I can recall it, but it looks to be the
16 cover page.

17 Q. All right. I'm going to ask you first if you recall that
18 it offered some statistics about TUSD's student population.

19 Does that highlighted figure of almost 53,000 students in
20 2011 at TUSD appear correct to you?

21 A. Yes. It has since declined to 47,000.

22 Q. Do you think that that percentage of Hispanic students at
23 60 percent is accurate?

24 A. Yes. It's probably even higher today.

25 Q. You see that they also include information about -- we're

1 at Page 6 now -- the MAS program. They identify just over 1300
2 middle and high school students at that point, and they are
3 over 90 percent Hispanic.

4 Is that consistent with your recollection?

5 A. Yes.

6 Q. If we did that math, would we see that something less than
7 three percent of the TUSD students are taking MAS classes?

8 A. Yes.

9 Q. If we looked at those 1300 students as a percentage of the
10 1.1 million students for whom you are responsible, would that
11 be about one-one thousandth?

12 A. Yes.

13 Q. Were you aware that the MAS director declined to
14 participate in the Cambium audit?

15 A. I was aware that a number of teachers declined to
16 participate. I knew that there was some kind of conflict with
17 the administrators of the program. I don't recall specifically
18 that he refused.

19 Q. Do you see there -- this is page 16 now -- the highlighted
20 language? Does that refresh your recollection that the
21 director of the Mexican-American Studies Department declined to
22 participate?

23 A. Yes.

24 Q. I'm going to ask you just a question about a quote that
25 plaintiffs put up. They put up this paragraph that's just

1 under Roman III and asked you to talk about it. I want to ask
2 you about that sentence there at the end that's highlighted:
3 Thus, vicissitudes will be indicated and substantiated.

4 Do you know what that means?

5 A. You know, I'm a South Tucson boy, and I don't use the word
6 "vicissitudes." So I have to confess. I have a suspicion that
7 it means things can be up and things can be down, but I might
8 be wrong with that definition.

9 Q. I'm going to show you page 22, one of the findings. Do we
10 see here that the Mexican-American Studies Department has a
11 minimal curriculum framework established for student
12 achievement?

13 A. Yes. And that was -- this was a huge issue for
14 Ms. Hrabluk, as I interpreted the discussion, one, that we're
15 an experienced, all-star education leader. You start with a
16 well-defined curriculum, you develop your lesson plans. You
17 get organized you make sure that every minute of every class
18 period is being utilized to move students forward.

19 If a great education leader comes in and sees minimal
20 curriculum framework, right away they know what they're looking
21 at. They're looking at chaos. They're looking at
22 inappropriate -- likely inappropriate behavior, a lack of
23 organization within the classroom. So this has enormous
24 meaning for experienced education leaders, this finding here.

25 Q. Does a good curricular framework give the observer a site

1 principal or an administrator an idea of what a teacher is
2 going to be teaching at a particular time and what materials
3 and methods they're going to be using?

4 A. Absolutely. It lays it all out. You have -- you can start
5 to develop lesson plans off of it. You can -- you know, in a
6 sense, it is the lesson plan. It's a body of work that enables
7 you to help teachers become organized and utilizing every
8 minute of the class period.

9 I mean, when you look at the failure to perform by minority
10 students and by students of poverty, you can go directly to the
11 lack of their effective use of time during the day, the lack of
12 reading that they're doing, and other academic activities. And
13 so this right here is just a huge red flag about the whole
14 program.

15 Q. So that you --

16 A. Like I've said, you know, if they were going to train
17 revolutionaries, they were doing a very poor job of it because
18 they just simply weren't organized. In a sense, if that was
19 their mission, to radicalize these students and to have these
20 students go out and be agents of radicalization in society, we
21 weren't observing that they were organized to do this. They
22 weren't very organized at all.

23 And that was part of the fury that later Jennifer Flowers
24 had when she took over the oversight and observation of these
25 classrooms, is that they still had not cured these flaws. That

1 was a part of the finding at the end of my administration.

2 Q. Was that Jennifer Johnson actually? Dr. Jennifer Johnson?

3 A. Yes. Excuse me.

4 Q. That's all right.

5 A. Oh, my gosh.

6 Q. It's all right. I had my gaff, we'll give you that one.

7 So count a curricular framework, do you know what's being

8 taught? If you look at the materials, can you tell what's

9 being taught or when?

10 A. No.

11 Q. You know that as a teacher, too, right now, right?

12 A. Yes.

13 Q. Now, we're only going to look at this quote once today, but

14 yesterday we saw that Cambium repeatedly stated that there was

15 no observable evidence, right, as we see here on the bottom of

16 Page 31?

17 Do you recall that Cambium said no observable evidence of a
18 violation, no observable evidence of a curriculum?

19 A. Yes.

20 Q. Do you recall that one of the tasks that Cambium was

21 required to perform was to analyze the classroom materials that

22 were used in MAS classes, right?

23 A. Yes.

24 Q. And so out here we see that they have observed nine

25 curriculum units that we see at the bottom of Page 34, correct?

1 A. Yes.

2 Q. Do you know what a curriculum unit is?

3 A. Over the course of the year, I am trying to remember the
4 exact numbers, but you have quite a few units, curriculum
5 units, over the course of the year. And so this was a very
6 minimal number of those curriculum units.

7 Q. So a curriculum unit might cover a week or two of lessons?

8 A. Yes.

9 Q. And so a class, a 36-week class might have anywhere from 18
10 to 36 curriculum units?

11 A. Yes.

12 Q. That's just one class, right?

13 A. Yes.

14 Q. So they reviewed nine?

15 A. Mmm-hmm.

16 Q. But to your knowledge, they looked at elementary, middle,
17 and high school classes, right?

18 A. Yes. And that's why when you go back to the reference to
19 very little evidence of organized curriculum, that's why it's
20 just of extreme concern that you would have a school district
21 as large as Tucson unified, and with the administrative staff
22 they have, with the extra layers of focus that they're supposed
23 to have for the education of minorities, that you would have a
24 situation like this; that you haven't organized all of that
25 support mechanism to create a well-organized curriculum for

1 these students -- for these teachers to help guide them through
2 and so that they can be supported in the classroom, and be
3 helping to move these students along.

4 In a highly organized ethnic studies class, these students
5 should be reading lots of history, they should be reading lots
6 of inspirational stories about successful minorities, they
7 should be laying a roadmap out, and all the challenges, too,
8 that people have referenced. The challenges, historical
9 challenges that were part of the materials, but in a balanced
10 way.

11 Q. So a successful, I think, studies class could include
12 information about oppression that that minority group had
13 experienced, right?

14 A. Absolutely.

15 Q. All right. So we see here that although Cambium is only
16 reviewing nine curriculum units, fully 30 percent contained an
17 overabundance of controversial commentary inclusive of
18 political tones of personal activism and bias, and then we see
19 that they are suggesting that words used to dehumanize or
20 belittle any elected official or community leader would have
21 been eliminated.

22 Is this suggesting to you that the Cambium auditors found
23 that fully 30 percent of the curriculum they reviewed contained
24 material that dehumanized leaders?

25 A. That's what I would interpret this commentary to be.

1 Q. Did information like this in the Cambium audit concern you
2 when you read this about the MAS program?

3 A. Yes.

4 Q. So then Cambium goes on for several pages to detail the
5 concerns, correct? We see on Page 35 they have questionable
6 material here. We go on, Page 36, more questionable material.
7 Did you read this portion of the Cambium audit?

8 A. At that time I read the whole audit all the way through.
9 The recollection of specifics here, I was concerned earlier
10 when the plaintiffs were talking about this having nothing but
11 positive observations, I'm going, like, that was not my
12 recollection, and they were being made as statements of fact.
13 But obviously, now that we have specific materials, that there
14 were substantial concerns within the Cambium audit about the
15 degree of curricular organization and the materials that were
16 contained in there.

17 Q. Okay. And so that goes on for a few more pages, but we'll
18 move on to the next topic.

19 Now, another task that Cambium was asked to perform was an
20 analysis of whether the MAS classes were promoting student
21 achievement, right?

22 A. Yes.

23 Q. Do you know whether Cambium in fact performed such an
24 analysis?

25 A. As best I can recall, in what the plaintiffs put on the

1 table this morning, they were just simply doing an association
2 analysis, and that doesn't have sufficient intellectual rigor
3 to be able to make a conclusion about what was going on. So I
4 don't have a specific recollection of that analysis.

5 Q. Let's look at the table they out. It's from Page 44. It's
6 Figure 19. That's entitled Re-Analysis of AIMS Outcomes For
7 Mexican-American Study Students. Does that refresh your
8 recollection as to whether Cambium performed its own analysis?

9 A. This looks to be the work by Robert Franciosi, this
10 particular work here. Was this included -- is this a part
11 of -- am I looking at something here from the Cambium audit?

12 Q. This is from the Cambium audit. We'll talk about
13 Dr. Franciosi in a moment, but could this be work performed by
14 Mr. Scott of TUSD's accountability and research department?

15 A. You know, I don't have a specific recollection of this.

16 Q. Okay. That's fine.

17 A. If I could look at it for a second.

18 Q. But let's talk about Dr. Franciosi. You did mention that
19 you were familiar with work that he had done. Can you tell me
20 who Dr. Franciosi is?

21 A. He was a researcher in the Department of Education. I had
22 him -- over the years I had him do a number of studies for me.

23 Q. All right. And did you have confidence in him?

24 A. Yeah, he was -- he didn't have a social IQ in his brain,
25 but he was a quantitative genius. So he was amazing at being

1 able to understand what you had to do.

2 And so when I would have him do academic gain studies, I
3 didn't have to coach him on how to do them. It was very easy
4 for him to be able to pull whole data and to know when it was
5 being used correctly and when you were falsely associating
6 certain attributes to data.

7 Q. He was an employee of the Department of Education, right?

8 A. Yes.

9 Q. And did he do work for you while you were the chair of the
10 Senate Ed Committee or did he work for you?

11 A. Yeah, every once in a while I would ask him to take a look
12 at various things. For example, a legislator was talking about
13 some software, and so I had Franciosi pull the data for the
14 students who were using that software and compute the academic
15 gains of those students to see if the software was really
16 having any kind of positive effect because I wanted something
17 independent on the analysis. So it was various analysis like
18 that I would call him up and have him do.

19 Q. Do you know if Dr. Franciosi ever did any analyses of
20 whether MAS classes improved student achievement?

21 A. I believe that he did. My recollection is that he did. I
22 don't recall the specifics of it.

23 Q. Do you recall the conclusion?

24 A. Yes. That he couldn't find a positive gain for MAS
25 students relative to other students.

1 Q. Was that the only information that you had, only analysis
2 of student achievement and MAS classes that was available to
3 you at the time that you were making your decisions?

4 A. I mean, I remember sitting down and doing an analysis of
5 graduation rates. So second semester seniors have a 96 percent
6 graduation rate. So you have to be very careful.

7 Eighth graders might have a graduation rate, high school
8 graduation rate, depending on what demographic group they were
9 from, might have a graduation rate of 55 percent.

10 So to know and to be comparing like to like, second
11 semester seniors versus second semester seniors is critical,
12 because if you're comparing second semester seniors against any
13 other students, almost all of second semester -- very close to
14 a hundred percent of second semester seniors graduate, so you
15 can get very deceptive data by falsely associating graduation
16 rates, depending on which semester they're in in the high
17 school graduation sequence.

18 I don't know if that was too complex, but you just have an
19 attrition that takes place as you move through high school,
20 and, of course, second semester seniors as a group are going to
21 have a graduation rate very close to 100 percent.

22 Q. Because if you make it to the second semester of your
23 senior year, you're probably going to stick around and
24 graduate, is that right?

25 A. You bet. So I think part of what we observed was that kind

1 of association there.

2 Q. And so you did your analysis of graduation rates because of
3 your concern about what you heard, and you were aware of
4 Dr. Franciosi's study, right?

5 A. Yes, he was -- I believe he was looking at academic gains
6 on a pre and post basis.

7 Q. Were you aware of any other published information about
8 whether or not MAS classes improved student achievement at that
9 time?

10 A. I think generally the Tucson Unified School District had
11 published some data, so I believe that was all in the mix.

12 Q. I am going to go back to the Cambium audit. We see Page
13 63, that the there was no observable -- no observable evidence
14 was present to suggest that any classroom within the Tucson
15 Unified School District is in direct violation of the law. Do
16 you think this is a reference to their classroom visits?

17 A. I believe so.

18 Q. And Cambium was supposed to visit classrooms so that they
19 could observe MAS teaching, right?

20 A. Yes.

21 Q. Do you know whether or not they were able to observe MAS
22 teaching when they visited the classrooms?

23 A. My recollection is they had a great deal of difficulty
24 observing MAS teaching because there were substitute teachers
25 in, and there were -- there were a number of challenges. There

1 were a number of MAS teachers that refused to participate, and
2 there were a number of non-teaching classrooms that they
3 visited, so other activities were going on. So there were just
4 challenges associated with observing MAS.

5 Q. That's information that Cambium included in the appendices
6 to its --

7 MR. REISS: Objection, Your Honor. Move to strike, no
8 foundation.

9 THE COURT: Motion to strike is denied.

10 MS. COOPER: Did you say "denied," Your Honor?

11 THE COURT: Denied.

12 MS. COOPER: All right.

13 BY MS. COOPER:

14 Q. I want to ask you, did you read the entirety of the Cambium
15 audit?

16 A. I did at the time. That's been quite a few years. I don't
17 know -- I believe I read it more than once to go over it. I
18 was concerned because at the start of that, Elliott Hibbs had
19 said this audit's of a limited usefulness, and so I wanted to
20 understand why it was of limited usefulness.

21 Q. Well, let's look at the appendices to the Cambium audit and
22 see if that helps you remember whether or not you read this
23 information and considered it at the time. Let's look at Page
24 72, and that is entitled Elementary School Summary, and I'll
25 represent to you it's from the appendices. You see that it's

1 discussing whether or not the classes that Cambium observed in
2 elementary schools, right? And they indicate that there are
3 three elementary schools -- do you see?

4 A. Mmm-hmm.

5 Q. And then below they talk about whether or not they were
6 able to observe the instruction, right?

7 A. Yes.

8 Q. And do you see that one teacher was focused on obtaining
9 her doctoral degree and had spent minimal time in the
10 classroom. Do you recall that when you read the Cambium audit
11 that they said right there that they couldn't observe some of
12 the classes because the teachers weren't there?

13 A. Yes. There were a number of -- it seemed like TUSD was
14 just having an extraordinary number of organizational
15 challenges, starting with developing their curriculum so that
16 you could have a full-bodied curriculum that would then help
17 teachers be organized in the classroom.

18 So this kind of -- these kind of things happening in the
19 classroom are a logical outcome when you're not organized at
20 the curriculum level.

21 Q. Well, we don't know why these teachers weren't there,
22 right? So we see the other teacher was also unable to be
23 observed, right? That's all we know from here?

24 A. Yes.

25 Q. We don't know why. So they weren't able to observe any

1 elementary classes, right?

2 A. Yes.

3 Q. Let's look here at their middle school observations. They
4 talk about two middle schools, 70 students in the combined
5 sessions at one bilingual GATE, enrolled in three sessions at a
6 bilingual GATE Chicano studies. GATE is Gifted And Talented
7 Education, right?

8 A. Mmm-hmm.

9 Q. At Pistor, and then students at Wakefield, right? And
10 again, we see that in two of the middle schools visited, the
11 instructor is on leave, working to obtain her doctoral degree,
12 right?

13 A. Yes.

14 Q. So that MAS teacher wasn't teaching any classes when
15 Cambium visited, right?

16 A. Yes.

17 Q. So they didn't observe any evidence of anything.

18 And then we see at the other class that the teacher was on
19 her planning time. Is a teacher on her planning time teaching
20 her students?

21 A. She was on planning time with no students.

22 Q. Okay. And then let's look at the bilingual GATE class. We
23 there that the teacher is using the district-adopted regular
24 education math textbook, right?

25 A. Mmm-hmm.

1 Q. Were there MAS math classes in middle school that you were
2 aware of?

3 A. No.

4 Q. And then we see also that the MAS teacher has not been
5 present in her classroom either, correct?

6 A. Yes.

7 Q. And then we see finally at Wakefield the team did witness
8 some MAS instruction in a course, right?

9 A. Yes.

10 Q. So several middle school classes observed, only one in
11 which MAS teaching is occurring, right?

12 A. Mmm-hmm.

13 Q. Now let's look at high school. A little bit more
14 complicated because of the number of courses. We have Latino
15 literature, American history from a Mexican-American
16 perspective, and American government/social justice, right?

17 A. Yes.

18 Q. And see that they barely -- they don't even review half of
19 the classes that are available, right?

20 A. Yes.

21 Q. And let's see how much MAS teaching they witness at the
22 high school level. We have five Latino literature classes, and
23 here, on Page 81 is the description of what Cambium saw. Did
24 they see a guest speaker from a local college in one class?

25 A. Yes.

1 Q. Is that MAS teaching?

2 A. I think it could be a MAS activity, but it wouldn't be MAS
3 teaching. You wouldn't know what was going on.

4 Q. It could be a MAS activity because it's important that
5 students in high school learn about the college application
6 process, right?

7 A. Right, mmm-hmm.

8 Q. And then we have a substitute teacher in the next class
9 while the kids watch a school-wide news program? Is that MAS
10 teaching?

11 A. I think what you're documenting here is just the problems
12 that we saw just in general across the whole TUSD school
13 district. It was a school district that could not get itself
14 organized to respond to the external challenge of saying, get
15 your curriculum act together. They couldn't do it before we
16 came in to do our examination, and they couldn't do it
17 afterwards either. And as far as we know, they may -- they
18 still may not be getting their act organized.

19 These are the things that school districts are supposed to
20 do when you have layers of administration. That's supposed to
21 be their job, is to develop well-organized curriculum, be
22 supporting teachers in the classroom, and make sure they're use
23 every minute of every day.

24 What you're talking about here is that there was an
25 enormous amount of disorganized chaos going on in MAS

1 classrooms.

2 Q. We could go on longer and see that other high school
3 classes didn't have MAS teaching. But do you recall being
4 concerned when you read this report that the Cambium auditors
5 hadn't viewed very much MAS teaching?

6 A. Well, that was a part of the issue of the sample size, the
7 fact that -- and it wasn't just the fact that when they went in
8 there, they were -- these irregular activities were going on,
9 but it was also the fact that when they did go in and observe
10 things, that people were changing their behavior in response to
11 observation.

12 Q. Did your --

13 A. So we had concerns on every level of what we observed in
14 reading the Cambium audit.

15 Q. Did your staff review the Cambium audit, to your knowledge?

16 A. Oh, absolutely.

17 Q. Did they express concerns to you about it?

18 A. Yes. Well, as I mentioned, Elliott Hibbs right from the
19 beginning said this is of limited usefulness.

20 Q. What did your staff recommend happen with respect to the
21 Cambium audit?

22 A. I think they wanted to analyze it and utilize it to
23 whatever extent, both affirmatively and for the evidence that
24 the -- what was going on during inspection was different than
25 what was going on when the classes weren't being inspected. I

1 think they wanted to utilize it for whatever information they
2 could get out of it.

3 Q. Did they think they needed more information before that
4 could be a finding with respect to whether or not TUSD's MAS
5 classes were in compliance?

6 A. I think -- yes, I think the -- issuing the finding, if you
7 cared about students, you were going to send some kind of
8 wake-up message to TUSD to get organized, get their act
9 together, get curriculum developed, get lesson plans developed.
10 This is what education of students demands if you're going to
11 be running a successful school district.

12 And even later on, at the end of my tenure, when Jennifer
13 Johnson came in, and Carol, they were furious. They were
14 melting red hot furious over what they were observing, the lack
15 of organization, the lack of teacher support, the lack of
16 accountability, the lack of a kind of continuous improvement
17 culture where you were constantly making things better, the
18 chaos they observed.

19 It was completely inappropriate for a large urban district
20 with so much moral responsibility for our highly at-risk
21 students to be conducting itself that way.

22 Q. After your staff looked at the Cambium audit, did they
23 recommend that more examination of the TUSD MAS materials take
24 place?

25 A. I don't recall specifically. I know there was reference

1 that at some point there was a very large collection of
2 classroom materials that were extracted from MAS classes that
3 we had that was independent of the Cambium audit that was
4 retrieved to give us a viewpoint of -- a wider viewpoint of
5 what was going on in those classrooms.

6 Q. Did you believe that your staff -- do you believe that your
7 staff reviewed those materials to help you issue a
8 determination with respect to these MAS classes?

9 A. Yes, absolutely.

10 Q. You have issued a finding on June 15th, 2011, that we
11 talked about already, and you issued a statement as well,
12 right?

13 A. Yes.

14 Q. And we've talked about that before. This is Exhibit -- I
15 think it's 91, but I'm not sure. I believe we've talked about
16 it. Your official statement on June 15th, 2011. And you talk
17 there about things that you just mentioned. Lack of curricular
18 oversight, right?

19 A. Yes.

20 Q. The investigation that was conducted?

21 A. Yes.

22 Q. Your concerns about the Cambium audit?

23 A. Yes.

24 Q. We go on page 2. You continue with those concerns, right?

25 A. Yes.

1 Q. And you talk about the failure of the MAS director to
2 participate as well, right?

3 A. Yes.

4 Q. So he wouldn't provide information about the MAS classes
5 that the Cambium auditors could review, correct?

6 A. Yes.

7 Q. And those were the reasons that you -- that supported the
8 issuance of the finding, right?

9 A. Yes.

10 Q. Did your staff develop concerns on the basis of the
11 materials that they reviewed regarding what was being taught in
12 the MAS classes?

13 A. Yes. On every level. It was obvious that you were -- we
14 were witnessing a comprehensive failure on every single level
15 of educational execution, educational quality, that it just was
16 comprehensive in terms of its failure to meet minimum
17 standards.

18 Q. Was it also a concern then that it violated A.R.S. 15-112?

19 A. Yes.

20 Q. Because it encouraged the students to advocated ethnic
21 solidarity overseeing students as individuals?

22 A. Absolutely. I think the thing that we got out of this
23 numerous examples of that oppressed/oppressor framework, where
24 they were trying to put racial relationships into that
25 framework, and they were developing negative stereotypes about

1 the relationships between Caucasians and Hispanics.

2 Q. I'm going to take you then. TUSD appealed your finding,
3 right?

4 A. Yes.

5 Q. They were permitted to do so by the terms of the statute,
6 correct?

7 A. Yes.

8 Q. Did they -- where did they -- who heard the appeal?

9 A. An administrative law judge.

10 Q. Was he an administrative law judge employed by the
11 department or elsewhere?

12 A. He's independently employed.

13 Q. With the office of administrative hearings?

14 A. Yes.

15 Q. Does he make his decision? Are you familiar with the
16 Uniform Rules of Hearing Procedures?

17 A. Yes.

18 Q. And the statute required that any appeal take place
19 pursuant to these rules, right?

20 A. Yes.

21 Q. So that occurred, correct?

22 A. Yes.

23 Q. You gave a deposition, as a matter of fact?

24 A. Yes.

25 Q. And several -- do you know whether any department witnesses

1 were deposed or testified?

2 A. Yes. Kathy Hrabluk, John Stollar. I was aware they
3 brought in an out-of-state curriculum expert who testified.

4 Q. Did you monitor that process at all?

5 A. Very lightly.

6 Q. All right. And at the end what happened?

7 A. I can only describe it in general terms. I read the
8 administrative law judge's findings, but in general terms, he
9 upheld our findings as it related to the ethnic studies classes
10 in TUSD.

11 Q. And in front of you, is this the decision that the
12 administrative law judge issued?

13 A. Yes, it appears to be.

14 Q. Do you recall reading it at the time?

15 A. Yes.

16 Q. What do you recall about the thoroughness or the detail
17 with which the administrative law judge approached the issue
18 before him?

19 A. You know, my impression is that it was just devastating for
20 the Tucson Unified School District at every level, and I was
21 hoping that that would be the end of it and that we could get
22 on to the healing phase.

23 Q. Did you feel that the administrative -- what finding did
24 the administrative law judge reach in his decision?

25 A. You know, I don't -- I would have to be refreshed on it.

1 My general sense of it at the time was, is that he upheld, he
2 upheld our findings as the Department of Education.

3 THE COURT: Ms. Cooper?

4 MS. COOPER: Yes.

5 THE COURT: I think I'm going to cut off further
6 questioning along this line.

7 MS. COOPER: Okay.

8 THE COURT: Just a minute. Let me finish. I don't
9 see it's relevant, what his assessment of the ALJ's order is,
10 and that kind of questioning. The reason I am cutting it off,
11 while there's no objection, because you're opening the door for
12 vigorous cross-examination on this, and I don't see the purpose
13 of either side. Do you?

14 MS. COOPER: No, I --

15 THE COURT: What are you trying to show by this
16 examination?

17 MS. COOPER: Well, as the agency head, he has to
18 affirm, reject, or modify --

19 THE COURT: Which he did.

20 MS. COOPER: -- the decision.

21 THE COURT: And that's the sum and substance of it.

22 MS. COOPER: I am sorry, I didn't hear what you just
23 said.

24 THE COURT: That's the sum and substance of it.

25 MS. COOPER: That's fine.

1 THE COURT: He approved it. It doesn't matter that he
2 read every word in there, that he understood what
3 "vicissitudes" means or doesn't mean, or whatever it is.

4 MS. COOPER: Okay.

5 THE COURT: I mean, we have his testimony on the
6 substance.

7 MS. COOPER: Okay. We'll move on.

8 BY MS. COOPER:

9 Q. So you adopted the finding, as we've just discussed,
10 correct?

11 A. Yes.

12 THE COURT: Also, I don't think there is any issue,
13 if this is what you're trying to show, that there is any
14 irregularity in the proceedings before the ALJ or in the
15 process, interaction between the superintendent and the ALJ.

16 MS. COOPER: No, I don't believe there has been any
17 such allegation.

18 BY MS. COOPER:

19 Q. After you affirmed the finding -- I'm sorry. A press
20 release was issued after that finding, correct?

21 A. I believe so.

22 Q. That's what public information officers do?

23 Let me show you Plaintiffs' Exhibit 154, which is on that
24 list of stipulated exhibits. Do you recall this?

25 A. I do.

1 Q. Does this discuss your beliefs that all children,
2 regardless of race, ethnicity, and socio-economic status
3 deserve access to quality public education?

4 A. Yes.

5 Q. Does it at the end express your hope that TUSD will
6 implement appropriate ethnic studies classes?

7 A. Yes.

8 Q. Does it express any hope that TUSD will terminate its
9 classes?

10 A. No.

11 Q. And did you still hope at that point that TUSD could
12 implement appropriate ethnic studies classes?

13 A. Yes. I don't know at what point that I just got the sense
14 that they were sort of collapsing over the whole issue, and it
15 seemed that the people who were in charge may not even have the
16 ability to put together a curriculum, that even though that
17 would ostensibly be their job, and to be in the administration,
18 to do things like that, I began to have the suspicion that they
19 didn't even have the ability to be able to support those
20 teachers and those classrooms in an effective, law-abiding way.

21 Q. Did you issue an order terminating TUSD's MAS program?

22 A. No.

23 Q. Do you know whether TUSD had any options after you issued
24 your order that accepted the ALJ decision?

25 A. Yes. The window was getting very tight at that point. We

1 were already one year along, and it was obvious that they
2 hadn't kicked into action to get their act together, that they
3 were just sitting there.

4 I don't even know how to describe it. How can you be like
5 that? It goes against every grain of my being. If I were in
6 their situation back when I was on city council, we dealt with
7 all sorts of challenges, and we immediately responded. We
8 immediately got to work, put together people in rooms, you
9 know, started grinding away, you know.

10 I was on the school board for seven years, and our metrics
11 went up every single semester while we were on there. So we
12 dealt with lots of challenging issues. It just seemed like
13 they didn't have the ability. There's something wrong within
14 that education culture of that school district. They didn't
15 have the ability to do the fundamental things that
16 organizations should do.

17 Q. Did you know whether or not they could have appealed your
18 finding to the Superior Court in the State of Arizona?

19 A. I don't recall. I remember just very vaguely some kind of
20 discussion along those lines.

21 Q. Let me put in front of you Defendants' Exhibit 545.

22 THE COURT: I don't think it's a matter of whether he
23 knows or not, does it? Does it matter whether he knows that
24 they could have appealed?

25 MS. COOPER: All right. That's fine, Your Honor.

1 THE COURT: It's a matter of law as to whether they
2 could or not.

3 MS. COOPER: That's true.

4 THE COURT: I think it's clear. You can seek judicial
5 review of administrative orders.

6 MS. COOPER: It is.

7 THE COURT: I don't think you have to discuss that
8 with this witness.

9 MS. COOPER: Okay.

10 BY MS. COOPER:

11 Q. Now, the finding did order that funding be withheld from
12 TUSD, right?

13 A. Yes.

14 Q. Did the Department ever withhold any funding from TUSD?

15 A. No.

16 Q. Do you know whether or not the department -- you, on behalf
17 of the department, reached any agreement with TUSD with respect
18 to what should happen with their MAS classes?

19 A. I don't recall. I just recall them taking action, taking
20 their actions to suspend the classes, and I don't -- I can't
21 recall the specifics of all -- in which all that happened.

22 Q. All right. Let's look at Defendants' Exhibit 547. The
23 first page of the exhibit is a board resolution that I'm not
24 going to ask you about.

25 The second page is a two-page letter dated January 23rd,

1 2012, to you from Dr. Pedicone. Do you see that?

2 A. Yes.

3 Q. Do you recall receiving that letter?

4 A. I do.

5 Q. Do you see here that TUSD is going to seek the -- is going
6 to, with the assistance of MAS and input the Department of
7 Education revise its social studies core curriculum to increase
8 coverage of Mexican-American history and culture?

9 A. Yes.

10 Q. Was it your hope that that would happen?

11 A. Yes.

12 Q. I'm going to step back and talk a little just briefly about
13 ADE. It's a large agency with a lot of responsibility, right?

14 A. Yes.

15 Q. Did you have any kind of philosophy or procedures with
16 respect to whether you would initiate investigations with
17 respect to compliance with Arizona's various education
18 statutes? Did you wait for complaints?

19 A. I had a general philosophy that I articulated frequently
20 with our staff that I wanted the lightest possible touch when
21 it came to regulatory issues, that I wanted us to be
22 predominantly, primarily a service agency where we helped
23 people.

24 Q. So you didn't focus on investigations, you focused on
25 helping the districts that came to you?

1 A. I didn't focus on investigations. There are a number of --
2 Department of Education is by its nature -- it has several very
3 important regulatory functions. You have to keep districts and
4 schools and classrooms within the white lines on those issues,
5 but you want to do it with the lightest possible touch.

6 But there are regulatory functions which can be quite
7 severe when districts violate those. I mean, taxpayer dollars
8 and those issues.

9 Q. Did you investigate in response to complaints?

10 A. We did a number of times on a number of regulatory issues
11 across the state.

12 MS. COOPER: Your Honor, I see the time, and if you
13 would indulge me a few minutes to organize, it would be nice, I
14 think, if we could accommodate Mr. Huppenthal and only have him
15 be here today. Would you give me five minutes to organize
16 that?

17 THE COURT: That would be a good idea, wouldn't it?

18 THE WITNESS: I'm game for it.

19 THE COURT: Yes, that's fine.

20 MS. COOPER: Thank you, Your Honor.

21 THE COURT: What do you mean by that exactly?

22 MS. COOPER: I'm sorry, I meant, may I have a break of
23 five minutes to organize?

24 THE COURT: How much time do you need, just five
25 minutes?

1 MS. COOPER: Yes, quite literally, five minutes, Your
2 Honor.

3 THE COURT: You get five minutes. That's fine. We'll
4 take a five-minute recess.

5 MS. COOPER: Thank you, Your Honor. I'm sorry I
6 wasn't clear.

7 (A recess was taken from 4:43 p.m. to 4:49 p.m.)

8 THE COURT: Okay. Let's be seated and proceed.

9 MS. COOPER: I have only a few questions, Your Honor.

10 THE COURT: Good.

11 BY MS. COOPER:

12 Q. We talked -- you answered some questions about some
13 blogging activities, right?

14 A. Yes.

15 Q. Did you intend to express any discriminatory animus to
16 Mexican-Americans by the words that you used in those blogs?

17 A. No.

18 Q. Did racism play any part in your decision to find TUSD in
19 violation of A.R.S. 15-112?

20 A. No.

21 Q. Did ethnic bias have any part of your decision to issue
22 that finding?

23 A. No.

24 Q. Are you biased against Latinos?

25 A. No. I am the reverse of biased. If I could help these

1 kids, I would lay down in the mud and let them walk over my
2 back.

3 Q. Did your own partisan or political beliefs have anything to
4 do with your enforcement of A.R.S. 15-112?

5 A. No.

6 MS. COOPER: That's it, Your Honor.

7 THE COURT: All right. Any redirect?

8 MR. REISS: Your Honor, there would be. I suspect it
9 could go for about an hour or so, and so, given the hour, I
10 mean, I would -- I hate to impose upon Mr. Huppenthal.

11 THE COURT: So we're not going to finish then, huh?

12 MR. REISS: No, we're not.

13 THE COURT: In the next 10 or 15 minutes?

14 MR. REISS: No, Your Honor.

15 THE COURT: Well, I am sorry to hear that. I'm sure
16 Mr. Huppenthal is even sorrier than I am. Then there's no
17 sense in starting your examination now. So we'll recess for
18 the day. I have to ask you come back tomorrow.

19 THE WITNESS: Your Honor, is there -- I didn't bring a
20 change of clothes sufficient. I am going to drive back to
21 Chandler. Is there any way we could start at 9:30?

22 THE COURT: No. We could do this. We could do this.
23 Who is putting -- oh, you're putting on witnesses?

24 MR. REISS: I can take another witness.

25 THE COURT: Who is your next witness?

1 MR. QUINN: It would be Mark Anderson, and I'm
2 perfectly happy to start with him.

3 THE COURT: Mr. Anderson would take -- give me a guess
4 of how long he'll take.

5 MR. QUINN: I would say that my examination of him
6 would be 40 minutes.

7 THE COURT: And the cross won't be any longer, will
8 it?

9 MR. ELLMAN: It will not.

10 THE COURT: So what about 10:00 o'clock?

11 THE WITNESS: 10:00 o'clock would work.

12 THE COURT: All right. In fact, we'll say 10:15.
13 Okay? We'll give you a little leeway. We're imposing on you
14 as it is. So we'll say then -- we will ask you to try to be
15 back here by 10:15 tomorrow. You're excused for the day on
16 that basis. So you can step down now. I want to talk to the
17 lawyers for just a few minutes.

18 THE WITNESS: Thank you.

19 THE COURT: So you think, addressing Mr. Quinn, you
20 think you can have Mr. Anderson here tomorrow morning, right?

21 MR. QUINN: Yes, he's going to be here at 9:00
22 o'clock.

23 THE COURT: Good. All right. Now, let me ask, are
24 you going to talk to people more, you know, with your opponent
25 and your own witnesses and so forth, about scheduling, see if

1 you can do anything about getting anybody for Friday or not?
2 Just talk amongst yourselves, see if you can think of
3 something. All right?

4 MS. COOPER: Yes. We will this evening.

5 THE COURT: And then we'll discuss it first thing
6 tomorrow morning. All right?

7 MS. COOPER: Fair enough.

8 THE COURT: And see where we are. The reason I say
9 that, because, you know, I think, if we can, we should try to
10 make a decision on whether we're going into Friday before
11 Thursday night.

12 MR. REISS: Absolutely, Your Honor.

13 MS. COOPER: Yes.

14 THE COURT: The reason is, you know, some people here
15 want to get out of town, and this is the 4th of July weekend,
16 you know.

17 MR. QUINN: I hear there is a holiday coming up.

18 THE COURT: So I would expect air traffic to be
19 heavier than usual. So if we can decide by tomorrow, we have a
20 better chance of making rearrangements and that kind of stuff.
21 All right. So see what you can do tonight. We'll discuss it
22 first thing tomorrow morning. On that basis, we stand at
23 recess 'til 9:00 o'clock tomorrow morning.

24 (Proceedings concluded in this matter at 4:53 p.m.)

25

C E R T I F I C A T E

I, A. TRACY JAMIESON, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

I FURTHER CERTIFY that the foregoing pages constitute
a full, true and accurate transcript of the proceedings
contained herein, held in the above-entitled cause on the date
specified therein, and that said transcript was prepared by me.

Signed in Tucson, Arizona, on the 28th day of
June, 2017.

s/A. Tracy Jamieson
A. Tracy Jamieson, RDR, CRR

\$	13th [2] - 98:23, 98:24	1960s [1] - 58:17	261 [1] - 63:2	44,000 [1] - 128:14
\$500 [1] - 103:18	14 [1] - 95:22	1964 [1] - 103:18	263 [1] - 64:20	45 [1] - 153:17
\$56,000 [1] - 128:1	14,000 [3] - 127:11, 130:22, 131:16	1977 [1] - 155:22	26th [1] - 10:24	45th [1] - 2:12
\$60,000 [1] - 127:24	14th [8] - 78:24, 95:18, 97:14, 97:15, 98:23, 99:1, 99:3, 110:20	1993 [1] - 148:10	27 [1] - 1:6	47,000 [2] - 104:25, 159:21
'	15 [5] - 48:17, 59:18, 75:1, 96:2, 190:13	1:30 [1] - 87:12	28 [1] - 112:15	480 [1] - 2:24
'The [1] - 98:5	15,000 [1] - 105:13	1:37 [1] - 87:15	28th [1] - 193:11	49 [1] - 110:14
1	15-111 [1] - 140:9	1st [2] - 38:13, 38:18	29th [1] - 110:20	4:10-cv-00623-AWT [1] - 1:3
1 [5] - 6:9, 48:15, 55:14, 91:18, 156:18	15-112 [31] - 37:18, 38:10, 41:9, 49:10, 49:17, 51:21, 51:24, 52:21, 53:1, 55:21, 56:8, 59:5, 64:3, 67:11, 70:18, 71:15, 71:22, 75:14, 81:25, 83:8, 90:17, 91:3, 91:16, 91:24, 93:2, 98:1, 135:1, 143:4, 179:18, 189:19, 190:4	2	2:59 [1] - 139:22	4:43 [1] - 189:7
1.1 [3] - 85:17, 109:25, 160:10	15-112(A)(1) [1] - 91:22	2 [7] - 1:16, 6:9, 48:20, 55:14, 91:22, 119:23, 178:24	2nd [5] - 88:15, 88:16, 88:21, 101:14, 154:8	4:49 [1] - 189:7
1/2 [1] - 66:9	15-112(A)(1) [1] - 93:6	2-2-9 [2] - 88:3, 88:4	3	4:53 [1] - 192:24
10 [25] - 4:13, 44:12, 52:22, 53:3, 53:9, 53:11, 53:14, 53:24, 54:12, 55:12, 55:15, 60:4, 66:7, 83:4, 83:13, 83:21, 83:23, 84:6, 96:13, 97:1, 106:23, 116:18, 126:25, 141:9, 190:13	15-112(A)(2) [1] - 39:3	20 [2] - 44:12, 102:24	3 [4] - 6:9, 48:17, 55:14, 93:2	4th [5] - 97:23, 97:24, 98:10, 101:13, 192:15
10,000 [1] - 66:8	15-112(A)(2) [1] - 61:1	2000 [1] - 127:11	3,000 [1] - 109:15	5
100 [2] - 15:11, 169:21	15-112(A)(4) [2] - 93:19, 95:3	2005 [1] - 9:20	30 [5] - 67:24, 73:6, 132:4, 165:16, 165:23	5 [2] - 93:20, 156:16
10036 [1] - 2:12	15-112(B) [2] - 38:14, 83:3	2008 [1] - 155:14	300 [1] - 77:3	50 [2] - 106:22, 106:23
10153-0119 [1] - 2:5	15-341 [8] - 48:16, 48:18, 49:1, 49:9, 49:12, 50:10, 50:15, 51:21	201 [1] - 15:25	302 [2] - 62:3, 62:4	50,000 [1] - 108:11
103 [1] - 62:9	1500 [1] - 1:21	2010 [9] - 95:18, 95:22, 96:2, 97:15, 97:17, 97:18, 135:2, 136:17, 155:14	30th [1] - 102:3	500 [6] - 57:16, 60:8, 61:5, 87:22, 107:23, 129:6
104 [2] - 85:6, 85:7	1512 [1] - 122:17	2011 [28] - 37:16, 38:9, 38:13, 39:12, 67:8, 75:12, 78:24, 83:6, 83:17, 83:24, 88:13, 97:23, 97:24, 98:10, 98:13, 98:20, 101:14, 110:4, 110:8, 110:10, 110:18, 141:20, 153:13, 154:8, 158:18, 159:20, 178:10, 178:16	31 [1] - 163:16	52 [1] - 148:5
106 [1] - 3:6	154 [1] - 183:23	2012 [8] - 62:11, 65:13, 66:1, 66:2, 83:10, 84:25, 101:13, 187:1	310-8000 [1] - 2:6	520 [1] - 2:9
108 [1] - 82:17	155 [2] - 3:11, 117:23	2013 [1] - 102:3	32 [2] - 61:13, 61:22	520)205-4266 [1] - 1:22
10:00 [2] - 191:10, 191:11	15th [17] - 37:16, 38:9, 38:23, 38:24, 39:12, 46:22, 67:5, 67:8, 83:6, 83:24, 95:24, 96:6, 97:17, 99:4, 99:9, 178:10, 178:16	2014 [2] - 88:14, 102:19	33 [1] - 3:5	527 [2] - 153:11, 154:7
10:15 [2] - 191:12, 191:15	16 [2] - 60:4, 160:19	2015 [8] - 16:24, 20:14, 88:16, 88:21, 101:14, 110:4, 110:9, 110:10	330 [3] - 2:23, 156:4, 156:14	53,000 [1] - 159:19
10:36 [1] - 59:20	163 [3] - 6:13, 6:17, 6:18	2016 [1] - 60:3	34 [3] - 61:13, 61:22, 163:25	534 [2] - 78:22
10th [1] - 60:3	16E [1] - 8:19	2017 [2] - 1:6, 193:12	35 [1] - 166:5	542-8349 [1] - 2:21
11 [1] - 138:20	16th [2] - 75:12, 97:18	201D [1] - 7:15	35th [1] - 110:18	545 [1] - 185:21
110 [1] - 60:3	179 [1] - 61:7	206 [1] - 2:16	36 [2] - 164:10, 166:6	547 [1] - 186:22
112 [1] - 140:9	179-page [1] - 61:10	212 [2] - 2:6, 114:20	36-week [1] - 164:9	55 [1] - 169:9
115(A)(3) [1] - 46:25	18 [6] - 11:5, 20:1, 102:24, 115:11, 140:13, 164:9	21st [1] - 10:23	37 [13] - 67:22, 73:4, 73:8, 73:18, 73:21, 74:7, 74:20, 76:24, 77:6, 77:10, 77:11, 77:13	557 [2] - 56:5, 78:22
118 [4] - 3:10, 3:11, 88:25, 89:15	188 [2] - 6:13, 6:18	22 [1] - 161:9	38 [1] - 61:3	557M [1] - 87:24
11:01 [1] - 59:20	189 [2] - 5:20, 5:23	229 [3] - 3:12, 88:2, 88:8	38th [1] - 2:12	57 [1] - 61:2
11:55 [1] - 87:15	18th [1] - 62:11	23rd [2] - 100:23, 186:25	39 [2] - 61:11	6
11th [1] - 110:17	19 [1] - 167:6	24th [1] - 153:13	398-4025 [1] - 2:16	6 [4] - 56:11, 75:1, 125:10, 160:1
12 [1] - 23:6	190 [1] - 5:23	25 [1] - 107:11	3:00 [1] - 10:24	60 [4] - 52:20, 84:1, 151:15, 159:23
120 [1] - 2:12		25th [1] - 102:19	3:25 [1] - 139:22	602 [1] - 2:21
1215 [1] - 2:15			3rd [4] - 88:15, 98:13, 98:20, 141:20	609-6352 [1] - 2:9
126 [2] - 35:6, 35:18			4	62 [1] - 70:24
1275 [1] - 2:20			4 [4] - 93:18, 93:20, 148:6, 156:17	63 [1] - 170:13
12:00 [1] - 87:8			4) [1] - 91:22	630-6490 [1] - 2:24
12th [3] - 93:1, 107:24, 110:20			40 [1] - 191:6	646 [1] - 2:13
13 [1] - 23:6			400 [2] - 109:5, 149:15	690 [1] - 38:6
1300 [2] - 160:1, 160:9			405 [1] - 1:21	691 [1] - 46:21
			41 [3] - 107:14, 109:1, 149:14	6th [2] - 82:17, 83:10
			43250 [1] - 2:8	7
			44 [1] - 167:5	7 [1] - 60:3
				70 [1] - 173:4
				72 [1] - 171:24

766-0073 [1] - 2:13
767 [1] - 2:5

8

8 [4] - 6:10, 54:7, 60:4, 156:18
81 [1] - 174:23
85 [1] - 75:1
85007-2997 [1] - 2:20
85012 [1] - 2:23
85701 [1] - 1:21
85733-3250 [1] - 2:9
88 [1] - 3:12
8th [4] - 101:1, 101:12, 101:17

9

9 [8] - 95:11, 95:14, 95:25, 96:3, 98:15, 99:1, 99:5, 102:6
90 [6] - 3:10, 38:2, 44:20, 136:11, 136:25, 160:3
91 [1] - 178:15
92 [2] - 67:4, 71:23
93 [1] - 159:4
94 [2] - 75:10, 80:20
96 [2] - 66:9, 169:5
98122-4130 [1] - 2:16
9:00 [2] - 191:21, 192:23
9:07 [2] - 1:6, 4:2
9:30 [1] - 190:21

A

A)(1) [1] - 93:7
A)(2) [1] - 61:4
A)(2) [4] - 39:8, 56:8, 57:18, 61:14
A)(4) [2] - 93:24, 94:6
a.m [6] - 1:6, 4:2, 59:20, 79:14, 87:15
A.R.S [13] - 48:18, 52:21, 56:8, 71:15, 83:7, 91:16, 91:22, 93:6, 135:1, 140:9, 179:18, 189:19, 190:4
abandoning [2] - 16:7, 16:13
Abel [1] - 130:4
abiding [1] - 184:20
abilities [1] - 108:5
ability [9] - 9:3, 12:12, 123:19, 124:9, 147:25, 184:16, 184:19, 185:13,

185:15
able [27] - 7:20, 50:24, 54:18, 107:13, 107:17, 108:10, 108:11, 110:3, 112:2, 113:3, 113:9, 113:12, 115:6, 116:16, 116:20, 145:6, 153:24, 155:24, 155:25, 156:18, 167:3, 168:1, 168:4, 170:21, 172:6, 172:25, 184:19
Abolitionist [1] - 99:14
above-entitled [1] - 193:9
abruptly [1] - 36:4
absent [1] - 136:8
absolute [2] - 111:15, 129:6
absolutely [22] - 8:24, 44:18, 52:2, 53:17, 53:19, 77:6, 109:21, 111:3, 113:23, 124:13, 126:4, 126:8, 129:1, 131:13, 148:4, 162:4, 165:14, 176:16, 178:9, 179:22, 192:12
academic [15] - 24:11, 65:5, 110:2, 110:4, 126:15, 128:3, 128:21, 145:23, 149:19, 149:22, 150:9, 162:12, 168:2, 168:14, 170:5
academically [2] - 86:9, 151:9
accept [3] - 11:15, 11:17, 86:16
acceptable [4] - 44:17, 45:12, 45:15, 96:24
accepted [2] - 95:2, 184:24
accepting [1] - 82:21
accepts [1] - 28:11
access [2] - 72:16, 184:3
accessible [1] - 22:12
accommodate [1] - 188:14
accordingly [2] - 83:2, 83:9
accountability [3] - 149:25, 167:14, 177:16

accreditation [1] - 115:4
accurate [3] - 85:12, 159:23, 193:8
accused [1] - 9:13
achieve [4] - 56:14, 66:1, 110:3, 157:4
achievement [16] - 71:11, 71:12, 110:5, 111:1, 112:8, 149:6, 149:7, 149:10, 150:18, 151:3, 157:5, 161:12, 166:21, 168:20, 169:2, 170:8
achieving [1] - 99:15
acknowledged [1] - 156:14
Acosta [6] - 103:23, 103:25, 120:3, 120:9, 124:8, 130:7
Acosta's [8] - 33:24, 64:25, 102:11, 117:20, 117:25, 118:10, 118:18, 122:2
acquainted [1] - 31:5
acquired [1] - 116:5
act [8] - 133:10, 145:4, 145:7, 175:15, 175:18, 177:8, 185:2, 193:4
acted [1] - 11:1
action [5] - 139:4, 139:7, 155:2, 185:2, 186:19
actions [6] - 4:24, 17:11, 26:6, 26:9, 146:14, 186:20
active [2] - 20:7, 79:1
activism [1] - 165:18
activists [1] - 86:17
activities [9] - 43:14, 50:25, 69:9, 73:22, 134:18, 162:12, 171:3, 176:8, 189:13
activity [4] - 73:24, 175:2, 175:4
actual [2] - 65:18, 70:25
adamant [1] - 101:4
add [2] - 4:14, 19:19
added [2] - 6:3, 101:20
adding [2] - 8:24, 10:10
addition [5] - 47:3, 47:4, 47:6, 67:22, 73:4
additional [9] - 39:9,

39:15, 39:23, 40:6, 41:24, 42:1, 48:14, 49:1, 49:2
address [5] - 6:4, 11:3, 68:18, 113:17, 141:22
addressed [3] - 73:10, 86:18, 86:19
addresses [1] - 141:4
addressing [1] - 191:19
ADE [4] - 39:6, 75:23, 76:4, 187:13
adequately [1] - 113:16
adjective [1] - 45:22
adjust [1] - 83:8
administration [6] - 67:20, 71:25, 72:4, 163:1, 175:20, 184:17
Administration [1] - 148:8
administrative [17] - 81:19, 81:21, 81:24, 82:4, 82:14, 98:14, 98:21, 164:21, 180:9, 180:10, 180:13, 181:8, 181:12, 181:17, 181:23, 181:24, 186:5
administrator [6] - 45:12, 101:20, 147:16, 157:7, 157:13, 162:1
administrators [2] - 151:6, 160:17
admissibility [1] - 89:11
admissible [1] - 12:21
admission [2] - 36:9, 87:22
admit [5] - 11:22, 11:24, 13:15, 34:16, 117:23
admitted [20] - 19:15, 34:18, 34:19, 34:22, 34:25, 35:1, 35:11, 60:20, 88:8, 89:1, 90:13, 118:2, 118:8, 140:13, 151:15, 153:11, 154:5, 154:7, 159:4
Adolf [2] - 131:3, 131:12
adopt [1] - 49:6
adopted [6] - 27:20, 97:24, 98:10, 115:3, 173:23, 183:9

adopting [2] - 127:20, 127:22
ADR [1] - 2:11
advance [3] - 10:10, 86:8, 86:9
advancing [2] - 99:12, 128:7
advisor [1] - 147:7
advisory [7] - 112:19, 113:23, 114:2, 114:6, 114:13, 114:22, 115:7
advocated [1] - 179:20
affect [1] - 4:7
affected [1] - 140:25
affidavit [1] - 31:8
affirm [1] - 182:18
affirmation [1] - 59:3
affirmatively [1] - 176:23
affirmed [1] - 183:19
African [17] - 47:25, 48:4, 58:20, 93:21, 99:13, 99:17, 106:22, 108:22, 109:17, 110:13, 110:15, 112:9, 113:23, 114:4, 114:9, 126:6, 151:1
African-American [12] - 47:25, 48:4, 93:21, 106:22, 108:22, 109:17, 110:13, 112:9, 113:23, 114:4, 114:9, 126:6
African-Americans [5] - 58:20, 99:13, 99:17, 110:15, 151:1
afternoon [5] - 88:10, 88:11, 106:3, 106:4, 139:15
afterwards [1] - 175:17
age [1] - 80:23
agencies [2] - 148:2, 148:13
agency [9] - 52:4, 138:22, 138:25, 139:2, 139:11, 148:4, 182:17, 187:13, 187:22
agent [1] - 45:2
agents [1] - 162:20
ago [5] - 5:13, 10:9, 18:25, 20:6, 20:11
agree [3] - 8:20, 21:6, 117:23
agreeable [1] - 96:19
agreed [3] - 5:17,

- 34:19, 108:15
agreement [3] - 91:17, 91:21, 186:17
ahead [10] - 9:10, 15:21, 59:23, 89:12, 97:8, 123:15, 123:16, 123:18, 123:20, 140:6
aid [2] - 83:5, 141:10
aimed [1] - 24:9
AIMS [2] - 65:15, 167:6
air [1] - 192:18
aisle [1] - 148:24
Ajo [1] - 107:25
al [2] - 1:4, 1:9
alarm [1] - 54:20
alert [2] - 30:16, 30:19
algorithm [1] - 22:16
alignment [5] - 70:14, 70:16, 71:7, 132:22
ALJ [3] - 183:14, 183:15, 184:24
ALJ's [1] - 182:9
all-star [1] - 161:15
allegation [3] - 11:2, 11:9, 183:17
allotted [1] - 140:2
allow [5] - 4:9, 11:25, 19:18, 96:12, 112:21
allowed [3] - 50:3, 51:22, 52:11
almost [15] - 27:20, 66:11, 100:5, 102:2, 105:1, 109:1, 113:11, 117:19, 120:12, 126:25, 144:14, 144:19, 156:4, 159:19, 169:13
alternative [1] - 8:14
amazing [4] - 148:4, 156:25, 157:2, 167:25
amend [17] - 4:11, 5:3, 5:12, 7:17, 7:21, 7:23, 8:12, 8:16, 15:7, 16:8, 16:14, 16:19, 19:19, 21:21, 22:4, 22:20, 26:17
amended [2] - 12:4, 12:25
amending [1] - 12:23
amendment [9] - 15:16, 136:4, 136:8, 137:7, 137:13, 137:18, 137:19, 138:3, 138:14
Amendment [1] - 130:24
amendments [3] - 5:15, 137:23
America [7] - 95:21, 98:9, 99:5, 100:4, 100:5, 100:12, 126:1
America's [1] - 98:8
American [69] - 11:8, 11:16, 17:8, 38:16, 47:25, 48:4, 50:7, 52:3, 52:10, 52:20, 53:15, 65:5, 65:10, 67:22, 71:5, 73:5, 75:20, 76:25, 93:4, 93:21, 96:3, 98:16, 98:18, 99:7, 102:11, 106:22, 108:22, 109:17, 110:13, 112:9, 112:11, 112:13, 112:14, 112:19, 112:21, 112:25, 113:3, 113:4, 113:8, 113:9, 113:14, 113:23, 114:4, 114:9, 114:10, 114:11, 115:7, 119:16, 126:6, 126:7, 128:16, 128:25, 129:13, 129:16, 132:11, 133:16, 135:14, 140:20, 146:11, 147:5, 160:21, 161:10, 167:7, 174:15, 174:16, 187:8
Americans [16] - 17:8, 24:6, 24:7, 58:20, 59:1, 59:2, 99:13, 99:17, 110:15, 112:21, 113:18, 115:1, 135:16, 135:18, 151:1, 189:16
amount [5] - 42:25, 53:8, 61:21, 61:23, 175:25
amounts [1] - 151:11
ample [1] - 11:3
analogy [1] - 29:19
analyses [1] - 168:19
analysis [23] - 42:21, 42:24, 44:2, 48:2, 48:6, 48:7, 50:12, 51:18, 51:19, 65:15, 66:16, 147:25, 166:20, 166:24, 167:2, 167:4, 167:8, 168:17, 169:1, 169:4, 170:2
Analysis [1] - 167:6
analytically [1] - 105:8
analyze [5] - 58:12, 65:18, 70:5, 163:21, 176:22
analyzing [3] - 66:8, 150:8, 150:17
Anderson [4] - 31:2, 191:1, 191:3, 191:20
Angeles [1] - 58:19
angry [1] - 92:23
animus [8] - 11:13, 24:5, 24:9, 24:14, 25:4, 25:24, 104:18, 189:15
Annex [1] - 2:15
announced [1] - 54:19
answer [28] - 20:15, 20:23, 23:10, 28:3, 28:13, 28:14, 28:24, 30:3, 41:5, 42:13, 44:14, 49:20, 50:17, 52:1, 55:4, 63:20, 66:4, 68:8, 68:21, 68:22, 70:12, 75:4, 79:24, 84:20, 84:21, 88:18, 109:15, 137:21
answered [7] - 41:22, 51:15, 69:25, 70:2, 76:17, 84:9, 189:12
answering [1] - 42:15
answers [1] - 74:25
anti [7] - 11:8, 11:9, 11:16, 14:12, 24:17, 24:23
anti-immigrant [3] - 11:9, 11:16, 14:12
anti-Mexican [2] - 24:17, 24:23
anti-Mexican-American [2] - 11:8, 11:16
anticipate [1] - 30:24
anticipated [2] - 53:23, 54:18
anticipation [1] - 146:13
anyway [1] - 22:16
apart [1] - 65:22
apologize [5] - 47:19, 78:22, 103:7, 103:9, 103:12
apologized [2] - 19:16, 102:20
apologizing [2] - 103:8, 103:22
apology [3] - 102:22, 103:20, 103:21
appeal [3] - 98:14, 180:8, 180:18
appealed [6] - 81:9, 81:16, 81:17, 180:2, 185:17, 185:24
appear [3] - 44:25, 57:11, 159:20
appearance [2] - 17:22, 17:23
APPEARANCES [1] - 2:1
appeared [1] - 134:18
appendices [3] - 171:5, 171:21, 171:25
application [14] - 26:25, 27:6, 27:10, 27:12, 27:14, 27:16, 27:24, 28:17, 28:20, 28:22, 29:12, 30:1, 30:8, 175:5
applied [1] - 150:20
applies [1] - 23:12
apply [1] - 140:18
appointed [8] - 148:13, 148:15, 148:17, 148:23, 148:24, 154:15, 154:20, 193:4
apportionment [2] - 83:5, 83:9
appreciate [3] - 32:19, 33:4, 105:17
approached [1] - 181:17
appropriate [6] - 84:2, 86:15, 115:5, 139:4, 184:6, 184:12
appropriately [1] - 86:24
approved [3] - 72:11, 72:23, 183:1
approximate [2] - 69:15, 106:19
April [2] - 78:23, 135:4
Arce [3] - 31:3, 103:25, 129:21
area [5] - 14:9, 26:11, 108:3, 127:16, 128:7
argue [3] - 4:14, 21:4
argument [7] - 4:9, 4:10, 21:14, 22:2, 24:4, 28:5, 143:18
argumentative [2] - 43:12, 84:8
arising [1] - 115:20
ARIZONA [1] - 1:2
Arizona [40] - 1:5, 1:21, 8:25, 9:1, 15:16, 24:3, 33:19, 38:13, 48:16, 71:2, 71:8, 71:19, 75:18, 81:11, 83:3, 86:5, 86:13, 99:23, 110:10, 110:13, 110:15, 113:9, 113:19, 126:19, 127:12, 127:13, 128:8, 128:19, 148:3, 148:20, 152:17, 152:22, 154:1, 155:18, 155:24, 156:17, 157:4, 185:18, 193:6, 193:11
Arizona's [7] - 109:24, 111:2, 112:9, 112:11, 149:25, 157:5, 187:17
Arlington [1] - 14:7
arrangements [2] - 118:19, 118:20
ARS [1] - 48:15
art [1] - 82:15
article [3] - 63:25, 101:19, 102:2
Article [1] - 48:17
articulate [1] - 120:14
articulated [1] - 187:19
Asian [2] - 48:5, 59:1
Asian-Americans [1] - 59:1
aside [6] - 52:11, 54:19, 144:5, 144:23, 145:1, 151:21
assert [1] - 14:16
asserting [1] - 14:12
Assessment [2] - 110:5, 110:22
assessment [1] - 182:9
assist [2] - 52:5, 157:8
assistance [3] - 45:3, 151:23, 187:6
Assistant [1] - 2:19
assistant [5] - 90:22, 118:15, 118:25, 129:24, 146:3
associate [2] - 21:15, 154:19
associated [6] - 72:15, 73:17, 74:1, 143:2, 143:5, 171:4
associates [2] - 111:4, 126:8
associating [2] - 168:5, 169:15
association [3] - 66:13, 167:1, 170:1
assume [4] - 7:12,

34:16, 35:21, 39:1
assuming [2] - 96:23,
 98:22
at-risk [4] - 106:11,
 106:12, 107:19,
 177:20
athletic [3] - 111:9,
 126:10
attempt [1] - 10:18
attend [1] - 118:17
attended [4] - 119:19,
 129:19, 130:4, 135:4
attention [6] - 46:21,
 61:2, 88:24, 120:21,
 141:3, 151:17
attenuated [1] - 25:3
attitudes [1] - 98:9
Attorney [2] - 2:19,
 2:19
attributed [1] - 56:20
attributes [1] - 168:6
attrition [1] - 169:19
audiovisual [2] -
 48:21, 49:15
audit [54] - 40:1,
 40:24, 67:15, 67:16,
 67:17, 67:18, 68:3,
 68:12, 68:16, 68:17,
 69:1, 69:7, 69:23,
 70:10, 70:25, 71:4,
 71:6, 71:13, 71:16,
 71:18, 72:11, 72:23,
 74:3, 74:10, 74:22,
 75:24, 76:6, 76:10,
 78:3, 79:20, 80:25,
 158:25, 159:1,
 159:10, 159:14,
 160:14, 166:1,
 166:7, 166:8,
 166:14, 167:11,
 167:12, 170:12,
 171:15, 171:21,
 172:10, 176:14,
 176:15, 176:21,
 177:22, 178:3,
 178:22
audit's [1] - 171:19
auditor [5] - 157:25,
 158:3, 158:6,
 158:10, 158:12
auditors [11] - 39:5,
 40:10, 40:19, 40:20,
 40:23, 41:7, 72:8,
 76:8, 165:22, 176:4,
 179:5
August [3] - 83:6,
 83:24, 136:14
Augustine [2] -
 103:25, 130:2
authenticity [1] - 97:7

author [2] - 23:8,
 23:25
authored [2] - 136:4,
 137:13
authority [8] - 49:19,
 137:14, 137:19,
 138:8, 138:15,
 138:19, 138:23,
 141:7
availability [1] - 32:12
available [13] - 7:12,
 17:25, 18:3, 20:16,
 31:13, 31:14, 31:15,
 31:17, 31:21, 56:18,
 118:17, 169:2,
 174:19
Avenue [2] - 2:5,
 107:24
average [7] - 107:14,
 107:15, 149:14,
 149:16, 149:17,
 149:19, 149:22
avionics [2] - 111:11,
 126:11
award [1] - 92:8
Award [1] - 93:15
Award-winning [1] -
 93:15
awards [1] - 92:9
aware [15] - 61:7,
 132:18, 133:6,
 142:11, 149:6,
 149:22, 150:5,
 152:13, 152:16,
 160:13, 160:15,
 170:3, 170:7, 174:2,
 181:2
awareness [2] - 72:10,
 149:5
awesome [2] - 155:3,
 156:14
AZ [3] - 2:9, 2:20, 2:23
AZMerit [1] - 107:11
Aztlán [2] - 61:12,
 98:19
Años [1] - 60:8

B

back-door [1] - 10:18
background [9] -
 14:6, 14:8, 27:5,
 104:1, 106:5,
 106:10, 107:21,
 121:15, 147:6
backward [1] - 85:14
backwards [1] - 106:6
bad [9] - 9:12, 9:13,
 9:15, 25:1, 110:19,
 116:5, 128:22, 150:3

bail [1] - 15:18
balanced [1] - 165:9
ball [2] - 86:8, 86:9
ban [1] - 101:3
banc [1] - 15:12
banned [4] - 98:25,
 99:2, 100:24, 101:5
bare [2] - 100:20,
 103:14
bare-knuckled [2] -
 100:20, 103:14
barely [2] - 26:10,
 174:18
BARRINGTON [1] -
 2:4
based [10] - 11:11,
 11:12, 39:8, 39:12,
 39:19, 75:25, 99:24,
 116:1, 137:10,
 142:11
bases [1] - 68:3
basic [2] - 58:24, 91:3
basis [19] - 13:16,
 14:2, 28:2, 29:14,
 30:3, 30:4, 42:5,
 60:25, 61:6, 61:13,
 67:24, 90:6, 90:9,
 90:11, 127:24,
 170:6, 179:10,
 191:16, 192:22
Basketball [1] -
 123:13
Bates [7] - 38:5, 38:6,
 46:21, 61:2, 61:3,
 61:11, 159:7
battle [2] - 87:2, 87:4
battles [1] - 86:7
battling [1] - 102:23
bearing [1] - 109:13
became [7] - 58:17,
 106:9, 133:16,
 135:1, 135:11,
 135:13, 140:9
become [3] - 112:3,
 146:18, 162:7
began [5] - 58:21,
 58:25, 88:13, 134:6,
 184:18
begged [1] - 108:14
begin [2] - 32:8, 53:20
beginning [1] - 176:19
begins [3] - 38:6,
 67:14, 75:17
behalf [2] - 126:16,
 186:16
Behalf [2] - 2:2, 2:18
behaving [1] - 41:18
behavior [5] - 40:3,
 63:22, 69:2, 161:22,
 176:10

behaviors [4] - 39:24,
 40:8, 63:15, 102:13
behind [2] - 23:18,
 148:5
behind/below [1] -
 107:5
belief [1] - 99:6
beliefs [2] - 184:1,
 190:3
believes [1] - 11:8
belittle [1] - 165:20
bells [1] - 54:21
bellwether [1] -
 127:15
below [8] - 79:3, 79:4,
 91:2, 91:19, 107:7,
 107:8, 172:5
Ben [1] - 64:24
Bench [1] - 1:16
benefit [1] - 148:19
Benjamin [7] - 99:12,
 99:24, 100:3, 100:4,
 100:11, 100:12,
 130:16
best [4] - 29:15,
 114:21, 143:15,
 166:25
bet [1] - 169:25
better [10] - 20:11,
 65:5, 73:10, 86:14,
 109:10, 109:19,
 111:20, 123:14,
 177:17, 192:20
between [11] - 46:12,
 46:16, 61:17, 64:5,
 71:7, 78:2, 86:7,
 87:5, 150:24, 180:1,
 183:15
beyond [7] - 8:2, 8:4,
 8:5, 31:20, 67:18,
 68:12, 69:23
Bianchi [1] - 119:1
bias [2] - 165:18,
 189:21
biased [2] - 189:24,
 189:25
biases [1] - 112:5
Bible [4] - 50:1, 50:4,
 101:8, 101:9
big [4] - 59:5, 119:17,
 139:2, 148:16
big-wigs [1] - 119:17
biggest [2] - 66:6,
 66:20
bilingual [3] - 173:5,
 173:6, 173:22
bill [17] - 23:5, 24:19,
 24:23, 25:7, 25:10,
 25:25, 26:2, 26:6,
 116:6, 133:24,

135:1, 135:4,
 137:16, 138:2,
 140:9, 140:15, 141:5
billboards [1] - 95:20
bills [16] - 6:22, 7:3,
 7:6, 9:20, 10:5,
 19:25, 20:5, 23:4,
 23:7, 23:24, 25:9,
 25:10, 25:13, 25:14,
 25:16, 26:9
bit [19] - 35:19, 44:9,
 48:12, 79:4, 100:15,
 100:16, 107:2,
 120:18, 129:18,
 131:22, 132:1,
 133:1, 134:25,
 137:12, 140:14,
 143:1, 149:5, 157:8,
 174:13
bizarre [2] - 102:10,
 102:14
blame [1] - 56:18
blessed [1] - 147:15
blocks [1] - 100:21
blog [43] - 16:20,
 16:23, 16:25, 17:4,
 17:7, 17:9, 17:10,
 17:14, 17:21, 17:24,
 18:16, 18:19, 18:21,
 19:12, 19:14, 19:17,
 19:18, 20:13, 21:23,
 22:6, 22:8, 22:12,
 22:15, 26:16, 95:19,
 95:22, 96:3, 96:6,
 96:13, 96:15, 96:16,
 96:22, 97:7, 97:19,
 97:21, 97:22,
 100:25, 102:9,
 104:10, 104:13
blogging [6] - 17:11,
 95:10, 95:13, 104:5,
 104:7, 189:13
blogs [12] - 95:7,
 95:15, 95:17,
 100:18, 102:4,
 102:7, 102:8,
 102:21, 103:2,
 103:7, 103:10,
 189:16
board [28] - 6:11,
 44:23, 49:7, 52:8,
 52:20, 85:25, 86:16,
 86:18, 119:15,
 119:25, 120:1,
 129:20, 133:5,
 133:8, 133:12,
 133:18, 133:21,
 133:22, 134:22,
 137:15, 138:6,
 138:22, 139:10,

- 139:12, 145:6,
145:25, 185:10,
186:23
Board [5] - 4:24, 71:9,
119:18, 141:6
boards [5] - 48:18,
48:19, 48:20, 49:13
bodied [1] - 172:16
body [3] - 24:10, 42:1,
162:6
bolster [1] - 10:18
book [27] - 56:25,
57:1, 57:6, 57:11,
57:20, 58:9, 58:16,
58:17, 59:7, 60:8,
60:10, 60:13, 61:7,
61:10, 62:1, 62:4,
63:14, 66:18, 87:22,
87:23, 87:24, 88:1,
99:1, 100:24, 101:3,
101:4
books [20] - 36:8,
48:21, 49:9, 49:14,
51:11, 57:2, 57:3,
57:4, 60:25, 63:12,
64:12, 64:14, 64:15,
98:24, 98:25, 99:6,
99:7, 99:9, 101:6
bottom [13] - 19:12,
39:3, 52:18, 65:3,
67:13, 67:15, 80:21,
93:3, 93:20, 120:21,
151:18, 163:15,
163:25
box [3] - 55:23, 87:17,
98:25
Box [1] - 2:8
boy [1] - 161:5
brain [3] - 44:25,
108:9, 167:24
brainer [2] - 112:22,
113:11
branch [1] - 27:7
brawl [2] - 100:20,
103:14
break [2] - 110:12,
188:22
breakdown [1] - 26:23
brief [2] - 142:6, 151:6
briefed [3] - 142:17,
142:24, 159:12
briefly [6] - 14:23,
58:13, 59:13,
150:22, 155:12,
187:12
bring [18] - 9:16, 9:23,
13:6, 16:1, 17:4,
17:21, 51:3, 52:20,
54:3, 64:11, 64:21,
64:24, 88:14,
105:12, 133:17,
153:16, 153:19,
190:19
bringing [6] - 20:22,
24:12, 32:19,
104:24, 151:23,
155:5
brings [1] - 66:21
brothers [1] - 107:24
brought [8] - 20:16,
53:12, 54:2, 54:12,
77:5, 127:21,
156:11, 181:3
bucks [2] - 107:23,
109:15
Buddhism [1] - 94:10
build [1] - 99:17
built [2] - 103:18,
107:23
Burns [2] - 119:19,
129:20
business [2] - 4:4,
93:12
busy [3] - 42:25,
141:17, 141:25
BY [43] - 33:12, 35:7,
35:16, 36:22, 37:14,
38:8, 42:3, 43:8,
47:21, 50:8, 51:7,
51:20, 54:10, 60:23,
62:8, 67:3, 68:10,
69:21, 70:8, 76:20,
80:6, 80:13, 81:8,
81:15, 82:20, 84:11,
84:24, 85:11, 88:9,
89:14, 90:15, 97:12,
104:20, 106:2,
118:9, 140:8,
154:14, 159:9,
171:13, 183:8,
183:18, 186:10,
189:11
byproduct [1] - 26:3
-
- C**
-
- Cabrera** [1] - 31:5
calculating [1] -
155:22
calendar [1] - 32:13
caller [1] - 79:9
Cambium [66] - 37:16,
37:17, 37:19, 37:20,
37:21, 37:24, 38:24,
39:15, 39:21, 39:24,
39:25, 40:1, 40:4,
40:10, 40:17, 40:20,
41:7, 42:2, 42:21,
65:7, 66:15, 66:17,
67:6, 67:16, 67:25,
68:18, 69:22, 74:9,
75:24, 76:8, 80:22,
80:25, 158:25,
159:8, 160:14,
163:14, 163:17,
163:20, 165:15,
165:22, 166:1,
166:4, 166:7,
166:14, 166:19,
166:23, 167:8,
167:11, 167:12,
170:12, 170:18,
171:5, 171:14,
171:21, 172:1,
172:10, 173:15,
174:23, 176:4,
176:14, 176:15,
176:21, 177:22,
178:3, 178:22, 179:5
camera [1] - 119:9
campaign [1] - 33:18
campaigned [1] -
133:1
candidate [1] - 138:19
cannot [3] - 13:16,
16:19, 17:15
Capacity [1] - 1:8
capitalismo [1] -
57:22
care [7] - 20:18, 20:21,
22:11, 30:9, 32:21,
55:9, 56:3
cared [1] - 177:7
career [3] - 11:5, 23:8,
114:18
careful [4] - 64:13,
116:11, 131:5, 169:6
carefully [3] - 66:20,
78:20, 132:6
cares [1] - 12:22
Carol [4] - 90:24, 92:9,
92:22, 177:13
carrying [2] - 69:19
Case [1] - 1:3
case [19] - 4:25, 9:1,
9:19, 11:13, 14:18,
16:3, 22:13, 22:18,
24:16, 25:6, 27:12,
31:19, 32:8, 32:16,
54:6, 60:12, 76:19,
98:17, 98:18
cast [1] - 23:20
casting [1] - 103:21
Catalina [1] - 151:8
catastrophic [1] -
127:10
Caucasian [5] - 108:2,
122:5, 126:6,
150:24, 150:25
Caucasians [3] - 64:6,
101:25, 180:1
caused [2] - 63:8, 74:2
causing [1] - 105:1
cavalierly [1] - 74:18
cents [1] - 44:20
ceremonial [1] -
141:24
certain [3] - 21:19,
22:24, 168:6
certainly [4] - 95:17,
105:1, 113:12,
126:25
certification [2] -
112:20, 112:24
certified [1] - 106:9
certify [1] - 193:3
CERTIFY [1] - 193:7
cetera [3] - 38:16,
112:3
chain [1] - 79:7
chair [2] - 135:1,
168:9
challenge [6] - 14:19,
14:21, 66:20,
120:18, 121:11,
175:14
challenged [3] -
58:24, 107:20,
118:14
challenges [8] -
143:4, 165:7, 165:8,
165:9, 170:25,
171:4, 172:15, 185:7
challenging [4] -
112:23, 121:10,
155:19, 185:12
chamber [1] - 116:7
champion [1] - 100:7
chance [11] - 10:13,
34:24, 35:17, 85:16,
85:22, 103:11,
109:9, 109:11,
109:19, 112:7,
192:20
Chandler [3] - 116:23,
127:20, 190:21
Chang [1] - 2:15
change [4] - 36:2,
36:4, 36:20, 190:20
changes [1] - 40:3
changing [1] - 176:10
chaos [3] - 161:21,
175:25, 177:18
character [2] - 48:23,
49:16
characterize [2] -
64:5, 101:23
charge [5] - 11:19,
11:23, 11:24, 12:2,
184:15
charges [1] - 12:24
Charter [1] - 34:9
charter [2] - 27:8,
153:1
Che [7] - 33:25, 64:21,
64:22, 130:15,
130:18, 131:12,
131:20
check [1] - 32:12
Chicano [8] - 57:16,
59:3, 60:8, 82:15,
87:22, 120:22,
121:6, 173:6
Chicanos [1] - 58:25
child's [1] - 150:10
children [3] - 92:23,
109:25, 184:1
choice [4] - 35:15,
54:13, 60:11, 150:11
Cholla [2] - 93:4,
93:20
choose [2] - 107:19,
157:25
circles [1] - 132:19
circling [1] - 119:17
Circuit [3] - 15:12,
16:4
cite [5] - 49:1, 56:9,
61:12, 93:5, 94:4
cited [8] - 55:19,
55:20, 56:9, 61:6,
92:15, 93:1, 93:19,
93:22
cites [2] - 60:5, 61:22
citing [2] - 49:4
City [1] - 116:23
city [1] - 185:6
claim [4] - 65:4, 65:7,
65:12, 100:24
clarified [2] - 137:13,
154:10
clarifying [1] - 138:3
clarity [1] - 15:9
class [57] - 26:16,
39:7, 64:9, 65:1,
92:12, 101:8,
101:23, 106:20,
106:22, 106:24,
107:12, 108:21,
113:25, 114:1,
114:4, 117:21,
117:25, 118:10,
118:14, 118:17,
118:18, 119:4,
119:7, 119:10,
119:11, 119:19,
120:8, 122:3, 122:8,
124:6, 124:22,
125:1, 125:2, 125:4,
126:3, 129:19,

- 129:21, 129:22,
130:1, 130:5,
136:24, 142:11,
147:10, 150:3,
161:17, 162:8,
164:9, 164:12,
165:4, 165:11,
173:18, 173:22,
174:24, 175:8
- classes** [65] - 49:7,
65:5, 72:19, 81:19,
81:25, 82:2, 82:15,
91:1, 91:4, 91:5,
91:22, 92:24, 98:16,
98:25, 104:3, 104:4,
106:11, 114:3,
115:6, 129:13,
134:12, 135:15,
135:17, 140:16,
140:18, 140:20,
143:16, 143:17,
143:19, 144:1,
146:12, 147:1,
147:4, 147:8,
153:16, 154:1,
160:7, 163:22,
164:17, 166:20,
168:20, 169:2,
170:8, 172:1,
172:12, 173:1,
173:14, 174:1,
174:10, 174:19,
174:22, 176:3,
176:25, 177:5,
178:2, 178:8, 179:4,
179:12, 181:9,
184:6, 184:9,
184:12, 186:18,
186:20
- classified** [1] - 109:3
classifies [1] - 24:14
classroom [53] -
33:24, 34:1, 34:3,
39:10, 39:16, 39:19,
40:6, 40:8, 40:10,
40:14, 41:9, 43:11,
43:18, 45:18, 45:21,
46:5, 46:6, 46:13,
46:14, 63:16, 64:12,
64:18, 67:21, 69:3,
72:1, 72:5, 72:12,
72:24, 75:25, 90:25,
94:6, 98:7, 99:10,
101:7, 107:9,
120:12, 124:12,
124:20, 127:25,
128:1, 130:13,
156:13, 161:23,
163:21, 165:2,
170:14, 170:16,
172:10, 172:17,
172:19, 174:5,
175:22, 178:2
- classrooms** [35] -
40:19, 43:17, 44:24,
46:17, 67:23, 72:8,
72:16, 73:5, 73:6,
73:9, 73:12, 73:18,
73:24, 74:8, 74:21,
76:25, 77:15, 77:17,
80:24, 96:4, 99:3,
101:21, 102:13,
121:11, 134:18,
162:25, 170:18,
170:22, 171:2,
176:1, 178:5,
184:20, 188:4
- clean** [2] - 45:13,
145:3
cleaned [5] - 44:22,
54:22, 55:6, 83:20,
138:3
cleaning [1] - 49:8
cleanup [3] - 52:5,
52:11, 52:13
clear [6] - 39:7, 76:8,
91:14, 132:7, 186:4,
189:6
clearly [3] - 14:7, 47:7,
146:1
CLERK [2] - 154:4,
154:11
clerk [1] - 34:14
Clinic [1] - 2:14
clip [2] - 59:25, 60:5
clock [1] - 87:8
close [10] - 27:4,
83:19, 88:14, 91:6,
94:18, 127:25,
139:18, 151:3,
169:13, 169:21
closed [1] - 136:12
closely [2] - 95:1,
151:7
closest [1] - 29:19
clothes [1] - 190:20
coach [2] - 123:13,
168:3
Coach [1] - 123:13
Code [1] - 106:21
collapse [1] - 53:23
collapsing [2] - 103:3,
184:14
colleagues [1] -
148:19
collect [1] - 158:6
collected [4] - 46:16,
75:22, 76:4, 78:4
collection [1] - 178:1
collectively [1] - 94:22
collectivism [1] - 87:5
- college** [8] - 109:20,
111:21, 123:22,
123:24, 123:25,
124:12, 174:24,
175:5
color [1] - 101:18
Colorado [1] - 127:3
Columbia [1] - 2:15
Columbus [1] - 61:5
combination [1] -
147:23
combined [3] -
110:11, 139:25,
173:4
comfortable [3] -
73:13, 121:22,
122:12
coming [5] - 80:5,
107:6, 127:23,
148:16, 192:17
commenced [1] - 4:2
comment [2] - 21:9,
66:24
commentary [2] -
165:17, 165:25
comments [2] - 18:16,
95:7
Committee [1] -
168:10
common [6] - 24:11,
24:24, 115:15,
115:21, 116:12,
116:13
Common [8] - 102:23,
155:9, 155:12,
155:15, 155:17,
155:20, 156:16,
157:3
communicate [1] -
133:25
communication [2] -
24:8, 80:15
communications [1] -
134:9
community [7] - 86:1,
86:16, 94:21,
131:25, 132:10,
132:24, 165:20
community's [1] -
131:22
company [1] - 108:14
compare [4] - 39:22,
39:23, 110:9, 149:10
compared [1] - 157:1
comparing [4] - 128:2,
128:3, 169:10,
169:12
comparisons [1] -
131:6
compel [2] - 20:17,
20:23
competent [1] - 69:18
complaining [1] -
153:8
complaint [1] - 146:15
complaints [6] -
86:17, 115:19,
152:19, 153:3,
187:18, 188:9
complete [3] - 68:8,
72:9, 100:17
completely [4] -
51:22, 83:15,
102:25, 177:19
complex [2] - 115:24,
169:18
Compliance [1] -
89:22
compliance [18] -
52:21, 53:12, 54:2,
54:4, 55:7, 70:18,
71:15, 90:20, 90:21,
91:16, 93:3, 141:5,
141:9, 151:19,
151:23, 153:16,
177:5, 187:17
complicated [1] -
174:14
complimentary [1] -
103:23
composition [3] -
117:11, 117:12,
122:2
compound [1] - 63:18
comprehend [1] -
146:22
comprehensive [2] -
179:14, 179:16
compute [1] - 168:14
concern [18] - 53:21,
63:9, 63:12, 64:7,
64:10, 64:14, 68:24,
122:11, 122:13,
131:19, 137:5,
144:22, 151:24,
152:6, 164:20,
166:1, 170:3, 179:18
concerned [11] -
20:15, 122:15,
122:18, 125:12,
130:14, 133:6,
137:2, 166:9,
171:18, 176:4
concerning [3] - 4:23,
75:12, 142:21
concerns [24] - 10:25,
37:12, 67:15, 67:17,
69:2, 94:25, 126:14,
133:2, 133:16,
133:19, 134:3,
134:4, 134:16,
137:6, 142:14,
143:21, 158:22,
166:5, 166:14,
176:13, 176:17,
178:22, 178:24,
179:10
concert [1] - 133:10
concluded [1] -
192:24
conclusion [6] -
49:18, 50:16, 74:2,
94:23, 167:3, 168:23
conclusions [1] -
110:8
conduct [6] - 9:9,
45:23, 71:4, 147:14,
155:1, 157:23
conducted [7] - 39:10,
39:16, 75:19, 77:25,
156:3, 156:4, 178:20
conducting [2] -
158:1, 177:21
conference [2] -
19:16, 102:20
conferences [4] -
155:1, 155:2, 156:5,
157:1
conferred [1] - 5:16
confess [1] - 161:6
confidence [2] -
74:13, 167:23
confident [2] - 138:20,
147:25
confirm [1] - 22:25
conflict [1] - 160:16
Congress [3] - 1:21,
23:12, 99:18
consent [2] - 5:16, 6:3
consequences [1] -
141:4
conservative [1] -
101:3
conservatives [2] -
86:7, 104:21
consider [1] - 137:10
considered [4] -
25:15, 116:10,
137:9, 171:23
consigns [1] - 152:3
consistent [1] - 160:4
constantly [1] -
177:17
constitute [1] - 193:7
constitution [1] -
23:17
Constitution [4] -
15:16, 23:12, 23:16,
80:3
Constitutional [1] -

- 49:24
constitutionality [1] - 50:9
construct [2] - 64:2, 101:24
construction [1] - 158:15
consume [1] - 104:25
contained [5] - 39:6, 165:16, 165:23, 166:16, 193:9
contemporary [1] - 6:14
contempt [1] - 21:10
content [1] - 39:6
contents [1] - 36:6
contested [1] - 5:17
context [2] - 59:9, 95:23
continue [1] - 178:24
continued [1] - 63:13
continues [1] - 58:17
continuing [3] - 60:24, 113:25, 114:5
continuous [1] - 177:16
contrary [1] - 102:6
control [9] - 20:19, 20:21, 22:11, 116:16, 125:17, 125:22, 125:24, 126:3, 127:9
controversial [4] - 64:12, 101:10, 132:8, 165:17
controversies [2] - 37:11, 103:5
controversy [7] - 102:16, 103:2, 104:6, 104:24, 105:9, 105:12, 105:15
convenience [3] - 16:10, 18:13, 27:17
convenient [3] - 35:9, 35:12, 35:14
conversation [1] - 124:19
converted [1] - 156:6
cool [1] - 137:12
cooler [1] - 137:1
Cooper [10] - 2:19, 3:6, 14:25, 19:22, 32:5, 34:12, 118:4, 139:14, 154:4, 182:3
COOPER [110] - 10:15, 11:14, 11:25, 12:5, 12:10, 12:16, 13:3, 13:7, 13:12, 13:14, 13:20, 13:23, 14:1, 14:4, 14:6, 15:1, 19:23, 19:25, 20:10, 28:6, 28:9, 30:14, 32:6, 32:12, 36:11, 37:2, 41:21, 43:12, 44:13, 47:10, 49:18, 50:16, 51:15, 51:24, 60:15, 60:19, 62:5, 63:18, 63:20, 66:3, 68:19, 69:25, 70:11, 76:15, 79:21, 80:10, 81:4, 81:12, 84:8, 84:15, 84:18, 85:7, 85:9, 88:7, 89:4, 90:5, 90:7, 90:11, 96:8, 96:18, 96:20, 104:16, 105:21, 105:24, 106:2, 117:22, 118:6, 118:9, 139:16, 139:20, 139:25, 140:5, 140:7, 140:8, 154:6, 154:12, 154:14, 159:3, 159:9, 171:10, 171:12, 171:13, 182:4, 182:7, 182:14, 182:17, 182:20, 182:22, 182:25, 183:4, 183:7, 183:8, 183:16, 183:18, 185:25, 186:3, 186:6, 186:9, 186:10, 188:12, 188:20, 188:22, 189:1, 189:5, 189:9, 189:11, 190:6, 192:4, 192:7, 192:13
cooperate [2] - 72:16, 72:18
copacetic [1] - 54:22
copied [1] - 79:13
copy [6] - 28:2, 35:13, 60:8, 105:21, 140:14, 159:6
core [4] - 100:5, 100:8, 150:9, 187:7
Core [8] - 102:23, 155:9, 155:12, 155:15, 155:17, 155:20, 156:16, 157:3
Corky [1] - 61:12
correct [24] - 20:13, 21:20, 22:11, 88:7, 106:17, 115:9, 116:24, 135:5, 136:5, 138:12, 138:14, 141:11, 141:13, 148:20, 157:8, 159:20, 163:25, 166:5, 174:5, 179:5, 180:6, 180:21, 183:10, 183:20
corrected [1] - 83:8
correctly [5] - 20:17, 101:11, 108:12, 155:5, 168:5
corruption [1] - 66:13
cost [1] - 127:24
costing [1] - 109:14
council [2] - 116:23, 185:6
counsel [6] - 62:5, 84:16, 96:8, 97:21, 117:23, 129:10
count [1] - 163:7
counteract [1] - 156:2
countries [1] - 24:24
country [2] - 24:13, 24:22
couple [11] - 13:14, 25:11, 25:14, 33:16, 33:18, 59:12, 60:24, 92:25, 108:7, 151:14
Course [1] - 93:5
course [6] - 61:17, 108:8, 164:3, 164:5, 169:20, 174:8
courses [6] - 63:6, 81:20, 81:25, 82:5, 91:21, 174:14
court [5] - 1:23, 59:25, 86:8, 86:9, 115:3
COURT [197] - 1:1, 4:3, 4:18, 4:20, 5:7, 5:10, 5:20, 5:23, 6:8, 6:17, 6:21, 6:24, 7:4, 7:9, 7:12, 7:17, 7:20, 7:23, 8:2, 8:4, 8:6, 8:9, 8:12, 8:16, 9:15, 9:19, 9:22, 9:25, 10:8, 10:12, 11:11, 11:22, 12:2, 12:8, 12:11, 12:19, 13:5, 13:10, 13:13, 13:15, 13:22, 13:24, 14:2, 14:5, 14:22, 14:24, 15:2, 15:6, 15:14, 15:17, 15:20, 16:7, 16:12, 16:16, 17:18, 17:22, 18:6, 18:11, 18:18, 18:23, 19:4, 19:8, 19:20, 19:24, 20:8, 21:1, 21:4, 21:8, 21:13, 21:18, 26:22, 26:25, 27:4, 28:7, 28:10, 29:8, 29:11, 30:11, 30:18, 31:7, 31:10, 31:18, 31:23, 32:3, 32:10, 32:14, 32:19, 33:1, 33:3, 33:7, 33:9, 34:18, 34:21, 35:3, 35:14, 36:14, 36:19, 37:6, 41:22, 42:15, 43:13, 44:14, 47:15, 49:20, 50:17, 51:16, 51:25, 59:14, 59:17, 59:21, 60:11, 60:14, 60:16, 60:20, 62:7, 63:19, 63:21, 66:4, 66:24, 68:5, 68:21, 70:1, 70:12, 76:16, 79:23, 80:12, 81:5, 81:14, 84:9, 87:8, 87:12, 87:16, 87:20, 88:3, 88:5, 88:8, 89:6, 89:9, 89:11, 90:4, 90:6, 90:9, 90:12, 96:19, 96:25, 97:4, 97:6, 104:19, 105:20, 105:25, 118:4, 118:7, 139:14, 139:17, 139:21, 139:23, 140:4, 140:6, 171:9, 171:11, 182:3, 182:5, 182:8, 182:15, 182:19, 182:21, 182:24, 183:1, 183:5, 183:12, 185:22, 186:1, 186:4, 186:7, 188:17, 188:19, 188:21, 188:24, 189:3, 189:8, 189:10, 190:7, 190:11, 190:13, 190:15, 190:22, 190:25, 191:3, 191:7, 191:10, 191:12, 191:19, 191:23, 192:5, 192:8, 192:14, 192:18
Court [23] - 1:20, 4:25, 5:18, 14:19, 14:20, 16:5, 16:10, 18:14, 19:18, 21:5, 30:16, 30:22, 31:5, 31:6, 60:7, 60:8, 60:9, 60:22, 107:2, 185:18, 193:4, 193:5
Court's [4] - 5:6, 9:11, 21:11, 55:18
courtesy [1] - 105:18
Courthouse [1] - 1:20
courtroom [2] - 5:1, 34:14
Courts [1] - 14:17
cover [3] - 159:14, 159:16, 164:7
coverage [1] - 187:8
Crandall [2] - 137:24, 138:8
crazy [1] - 79:9
CRC [3] - 90:17, 90:18, 90:19
create [5] - 107:9, 107:11, 109:6, 146:2, 164:25
created [2] - 102:11, 103:24
creates [1] - 100:13
creating [3] - 64:4, 94:21, 115:23
credible [9] - 78:17, 78:18, 78:19, 79:16, 79:19, 80:9, 80:15, 80:17
credit [2] - 113:25, 114:5
credited [3] - 37:21, 37:24, 37:25
crime [2] - 106:21, 108:3
crisis [2] - 113:14, 113:16
Critical [4] - 56:12, 56:21, 56:25, 57:11
critical [4] - 57:7, 76:9, 113:1, 169:11
critically [1] - 121:13
cross [8] - 12:19, 31:9, 105:25, 139:24, 139:25, 153:2, 182:12, 191:7
Cross [1] - 3:6
CROSS [1] - 106:1
Cross-Examination [1] - 3:6
cross-examination [3] - 105:25, 153:2, 182:12
CROSS-EXAMINATION [1] - 106:1
cross-examine [1] - 12:19
CRR [2] - 1:19, 193:16
crushing [1] - 54:12
crux [1] - 46:1
Cuba [1] - 130:20
Cubans [1] - 130:22
cultural [3] - 24:12, 113:16, 127:19
Culturally [2] - 93:4,

93:21	dangerous [2] - 94:22, 155:25	deeper [1] - 120:19	demographic [2] - 110:12, 169:8	desert [1] - 117:14
culture [16] - 17:8, 66:14, 113:12, 113:19, 113:21, 127:9, 128:6, 129:6, 145:25, 146:2, 146:3, 146:6, 147:5, 177:17, 185:14, 187:8	dangers [1] - 131:10	deeply [3] - 78:21, 121:12, 127:6	demonstrate [2] - 11:13, 24:5	deserve [1] - 184:3
cultures [1] - 113:20	data [9] - 37:25, 65:18, 77:25, 128:17, 168:4, 168:6, 168:13, 169:15, 170:11	defeat [1] - 151:9	demonstrating [1] - 11:1	design [1] - 108:15
cure [5] - 9:3, 9:4, 13:18, 13:20, 13:21	date [7] - 136:5, 136:7, 136:19, 142:9, 143:1, 143:22, 193:9	defeated [1] - 110:14	demonstrative [4] - 96:9, 96:14, 96:21, 97:10	designed [4] - 47:8, 48:10, 71:11, 155:15
cured [3] - 13:25, 14:1, 162:25	dated [2] - 153:13, 186:25	defendant [2] - 17:5, 22:8	denied [5] - 14:20, 26:18, 171:9, 171:10, 171:11	despite [5] - 37:17, 37:19, 56:16, 80:22, 156:3
current [2] - 106:20, 134:16	dates [1] - 39:1	Defendants [2] - 1:10, 2:18	denominational [2] - 48:22, 49:16	destructive [1] - 125:20
curricular [4] - 161:25, 163:7, 166:15, 178:17	daughter [1] - 93:11	Defendants' [3] - 153:11, 185:21, 186:22	deny [6] - 15:18, 22:20, 26:14, 28:21, 28:22, 62:19	detail [3] - 82:16, 166:4, 181:16
curriculum [50] - 39:8, 44:22, 47:3, 47:5, 47:6, 49:6, 52:6, 53:20, 54:23, 63:7, 69:10, 71:4, 71:8, 71:14, 73:24, 74:22, 75:24, 76:5, 76:9, 85:24, 86:15, 91:3, 141:12, 141:13, 147:22, 154:23, 161:11, 161:16, 161:20, 163:18, 163:25, 164:2, 164:4, 164:6, 164:7, 164:10, 164:19, 164:25, 165:16, 165:23, 172:15, 172:16, 172:20, 175:15, 175:21, 177:9, 181:3, 184:16, 187:7	DAVID [1] - 2:4	defendants' [5] - 4:12, 4:21, 5:2, 6:9, 10:13	denying [1] - 29:1	detailed [2] - 82:2, 82:12
curtis [9] - 33:24, 64:25, 102:11, 102:15, 103:23, 103:25, 117:20, 124:8, 130:7	days [8] - 52:20, 84:1, 89:16, 112:13, 136:11, 140:2, 143:7, 153:17	defense [5] - 19:9, 32:4, 32:21, 56:5, 78:22	department [11] - 45:2, 75:20, 83:4, 132:14, 154:21, 158:9, 167:14, 180:11, 180:25, 186:16, 186:17	detected [1] - 92:21
custody [3] - 20:18, 20:21, 22:11	dead [1] - 102:12	Defense [2] - 61:1, 87:24	Department [20] - 27:13, 27:16, 28:18, 29:25, 70:10, 71:2, 71:19, 75:18, 83:4, 83:8, 129:5, 148:8, 160:21, 161:10, 167:21, 168:7, 182:2, 186:14, 187:6, 188:2	determination [9] - 67:5, 67:10, 67:19, 68:13, 69:24, 71:17, 76:2, 91:10, 178:8
customer [1] - 129:7	debate [1] - 135:9	definition [2] - 90:18, 161:8	department's [1] - 155:8	determine [4] - 47:25, 71:10, 71:14, 73:12
cut [3] - 96:11, 96:15, 182:5	decade [1] - 105:13	defines [1] - 87:6	Department's [1] - 47:7	devastating [1] - 181:19
cutting [1] - 182:10	decades [3] - 42:19, 43:7, 43:24	definition [2] - 90:18, 161:8	depict [1] - 98:8	develop [11] - 85:23, 85:24, 86:14, 86:15, 108:14, 114:19, 123:10, 161:16, 162:5, 175:21, 179:10
	December [9] - 95:18, 95:22, 95:24, 96:2, 96:6, 97:14, 97:17, 97:18	definitely [1] - 30:7	deposed [2] - 54:6, 181:1	developed [10] - 108:13, 113:24, 114:2, 133:15, 133:19, 142:14, 147:8, 158:22, 177:9
	deceptive [1] - 169:15	degree [12] - 66:12, 71:7, 73:12, 77:4, 86:18, 92:11, 106:10, 111:21, 123:25, 166:15, 172:9, 173:11	Department's [1] - 47:7	developing [3] - 132:5, 172:15, 179:25
	decide [1] - 192:19	degrees [1] - 136:25	depict [1] - 98:8	development [2] - 52:6, 52:7
	decided [1] - 147:11	dehumanize [1] - 165:19	deposition [11] - 10:7, 54:6, 54:8, 54:11, 60:1, 60:3, 60:4, 74:24, 75:6, 180:23	deviations [1] - 145:23
	decision [17] - 14:6, 14:8, 43:6, 50:13, 82:21, 84:3, 131:17, 136:24, 158:11, 180:15, 181:11, 181:24, 182:20, 184:24, 189:18, 189:21, 192:10	dehumanized [1] - 165:24	depositions [1] - 17:2	dialogue [1] - 120:17
	decisions [3] - 42:23, 50:24, 169:3	Del [1] - 60:8	depressed [1] - 146:7	DIANE [1] - 1:7
	declaration [1] - 52:4	delay [5] - 4:6, 8:7, 10:1, 10:2, 30:4	depth [3] - 66:16, 115:22, 146:22	Diane [1] - 91:8
	declined [4] - 159:21, 160:13, 160:15, 160:21	delayed [1] - 136:4	describe [10] - 45:24, 63:23, 70:6, 77:23, 81:22, 85:15, 121:24, 143:12, 181:7, 185:4	dictated [1] - 57:21
	DeConcini [1] - 1:20	delegated [4] - 21:14, 43:23, 56:3, 158:17	described [3] - 69:11, 91:18	died [2] - 57:19, 58:15
	deemed [1] - 80:23	Delgado [1] - 56:13	describes [1] - 80:16	differences [1] - 133:10
	deep [4] - 86:10, 133:15, 133:19	delineates [1] - 48:17	describing [2] - 94:16, 94:17	different [17] - 13:22, 25:16, 25:22, 29:10, 48:2, 49:24, 57:5, 69:4, 94:16, 101:18, 114:13, 122:7, 134:9, 155:6, 159:5, 176:24
		delve [1] - 44:9	description [2] - 102:22, 174:23	difficult [7] - 14:15, 50:24, 54:3, 115:21, 138:12, 139:9, 144:3
		demanding [1] - 72:7		difficulty [1] - 170:23
		demands [1] - 177:10		dime [1] - 44:19
		Democrat [3] - 148:15, 148:21, 148:22		
		democratic [2] - 138:18, 148:13		

D

D.C [1] - 62:13
Dad [1] - 93:12
dad [1] - 103:18
damage [1] - 156:20
dance [1] - 94:25
danger [1] - 85:20

- diploma** [1] - 111:20
DIRECT [1] - 33:11
direct [14] - 46:13, 46:15, 46:16, 46:20, 59:22, 78:4, 101:19, 120:20, 132:7, 132:25, 139:25, 140:3, 141:3, 170:15
Direct [1] - 3:5
directing [2] - 61:2, 88:24
directly [14] - 46:11, 64:3, 69:17, 77:18, 78:1, 101:21, 102:2, 104:18, 121:8, 129:22, 134:2, 134:9, 159:7, 162:10
director [9] - 111:9, 111:10, 119:16, 126:10, 142:23, 144:8, 160:13, 160:21, 179:1
dirty [1] - 23:21
disagree [3] - 45:8, 45:22, 46:7
disappointing [1] - 107:15
discerning [1] - 14:14
disclose [1] - 10:17
disclosed [1] - 104:17
discourteous [1] - 41:4
discovery [1] - 18:4
discriminatory [2] - 14:17, 189:15
discuss [9] - 9:6, 15:10, 33:3, 124:16, 184:1, 186:7, 192:5, 192:21
discussed [11] - 10:6, 19:13, 33:17, 34:12, 37:1, 37:15, 151:16, 154:16, 158:22, 159:1, 183:9
discusses [1] - 17:13
discussing [3] - 11:16, 13:5, 172:1
discussion [15] - 92:4, 119:13, 119:14, 121:3, 121:9, 124:15, 125:11, 130:10, 135:21, 135:24, 136:2, 143:10, 144:4, 161:14, 185:20
discussions [1] - 44:2
disinterested [1] - 158:6
disorganized [1] - 175:25
- dispute** [1] - 138:1
disputed [1] - 17:15
distinctive [1] - 150:16
distinctly [1] - 130:3
distract [1] - 86:25
distraction [3] - 86:10, 103:8, 103:22
district [16] - 4:24, 48:18, 54:13, 83:6, 127:17, 129:8, 135:11, 146:24, 150:15, 164:20, 173:23, 175:13, 177:11, 177:19, 185:14
DISTRICT [2] - 1:1, 1:2
District [33] - 38:15, 52:8, 55:1, 55:11, 67:20, 71:25, 72:4, 75:13, 81:9, 83:14, 84:5, 84:13, 85:19, 86:6, 86:12, 89:20, 90:24, 91:18, 91:20, 92:16, 97:25, 111:10, 126:10, 126:15, 127:5, 128:1, 145:21, 145:22, 170:10, 170:15, 181:20, 193:5
district's [1] - 83:9
District's [1] - 71:5
district-adopted [1] - 173:23
districts [11] - 50:15, 127:21, 128:8, 128:20, 129:3, 133:11, 149:11, 175:19, 187:25, 188:3, 188:7
disturbing [1] - 127:6
diverse [7] - 107:20, 117:9, 117:17, 121:18, 121:20, 121:24, 122:3
diversity [1] - 121:25
division [2] - 111:7, 129:7
doctoral [2] - 172:9, 173:11
doctorates [1] - 112:3
document [14] - 11:24, 27:20, 28:12, 29:17, 36:23, 37:3, 81:4, 89:15, 89:24, 90:16, 105:21, 154:7, 159:3
documentation [2] - 69:5, 130:21
- documented** [1] - 130:25
documenting [1] - 175:11
documents [9] - 4:22, 4:23, 12:13, 16:17, 21:20, 23:4, 29:21, 29:22, 154:9
dog [1] - 85:21
dollar [1] - 157:1
dollars [2] - 66:8, 188:7
dominates [1] - 58:23
done [14] - 9:10, 12:17, 45:1, 65:15, 83:19, 91:7, 91:12, 92:1, 145:7, 146:5, 147:9, 156:9, 156:10, 167:19
door [3] - 10:18, 113:7, 182:11
dot [8] - 57:20, 57:23, 57:25
dots [1] - 57:25
Douglas [1] - 91:8
DOUGLAS [1] - 1:7
down [34] - 14:19, 22:1, 39:2, 44:20, 47:11, 48:12, 57:14, 63:5, 64:22, 71:20, 74:11, 75:16, 77:3, 77:8, 79:4, 86:8, 86:9, 87:13, 93:3, 94:4, 98:24, 114:23, 132:5, 137:12, 139:17, 146:7, 146:19, 151:5, 155:21, 161:7, 169:4, 190:1, 191:16
downtrodden [1] - 126:12
Dr [20] - 10:6, 10:7, 12:16, 31:15, 129:24, 130:16, 133:20, 134:5, 134:11, 145:17, 145:19, 153:13, 163:2, 167:13, 167:18, 167:20, 168:19, 170:4, 187:1
draft [1] - 74:11
drafted [1] - 74:12
dramatic [1] - 126:22
dramatically [1] - 36:2
draw [1] - 151:17
drill [1] - 147:9
drive [2] - 146:3, 190:20
driven [1] - 58:22
drop [3] - 5:17, 39:2, 48:12
- drops** [1] - 136:25
due [3] - 56:15, 83:6, 156:21
duly [1] - 193:4
during [12] - 9:11, 74:22, 75:25, 98:14, 98:20, 101:17, 120:10, 130:12, 135:19, 155:20, 162:11, 176:24
duties [2] - 48:17, 48:19
-
- E**
-
- e-mail** [7] - 78:23, 79:4, 79:7, 79:8, 79:12, 79:14
e-mails [3] - 132:12, 132:13, 132:25
early [1] - 58:17
ears [1] - 124:20
earth [1] - 84:5
easier [3] - 21:2, 140:14, 159:6
easily [2] - 54:18, 126:25
easy [1] - 168:3
economic [5] - 56:14, 56:16, 56:17, 126:17, 184:2
economically [1] - 107:20
economics [1] - 84:4
Ed [2] - 135:2, 168:10
editing [1] - 100:19
educated [1] - 57:24
education [36] - 11:18, 14:10, 25:11, 25:17, 33:19, 66:11, 66:14, 86:13, 101:15, 112:18, 114:5, 126:19, 128:6, 137:15, 138:22, 144:13, 145:25, 146:1, 147:20, 147:22, 150:20, 152:3, 154:24, 155:5, 155:7, 156:3, 161:15, 161:19, 161:24, 164:23, 173:24, 177:10, 184:3, 185:14, 187:17
Education [19] - 27:14, 27:16, 28:18, 29:25, 70:10, 71:2, 71:9, 71:19, 75:19, 83:4, 89:21, 129:5, 141:7, 167:21, 168:7, 173:7, 182:2, 187:7, 188:2
educational [4] - 111:12, 154:25, 179:15
Educational [2] - 110:6, 110:22
educator [1] - 155:7
educators [4] - 50:19, 92:7, 92:23, 113:24
effect [11] - 24:2, 28:11, 38:21, 47:2, 49:17, 50:10, 51:13, 59:5, 97:7, 137:2, 168:16
effective [9] - 83:6, 91:4, 114:3, 136:4, 136:7, 136:19, 143:22, 162:11, 184:20
effectively [2] - 94:12, 153:19
effects [2] - 65:9, 156:2
efficient [3] - 9:9, 30:17, 31:25
efforts [1] - 30:17
effusive [1] - 129:11
egregious [2] - 45:9, 45:23
eight [3] - 9:20, 22:19, 116:23
eighth [5] - 110:7, 110:9, 110:10, 110:13, 169:7
either [16] - 4:14, 6:24, 17:6, 22:17, 23:8, 32:21, 110:20, 120:7, 124:20, 134:2, 149:7, 150:10, 174:5, 175:17, 182:13
Elect [1] - 91:8
elected [1] - 165:20
election [11] - 136:9, 136:10, 136:17, 136:20, 136:25, 137:3, 137:8, 137:10, 137:11, 138:17
elections [1] - 138:20
elementary [7] - 82:5, 106:14, 106:16, 164:16, 172:2, 172:3, 173:1
Elementary [2] - 111:4, 171:24
elements [1] - 134:7
eleventh [1] - 110:17

eliminate [2] - 147:1, 147:4
eliminated [2] - 83:15, 165:21
Elliott [16] - 42:20, 43:2, 50:19, 68:25, 69:11, 69:13, 73:14, 147:15, 147:20, 148:2, 148:17, 154:15, 156:24, 157:16, 171:18, 176:18
ellipsis [1] - 61:17
ELLMAN [1] - 191:9
Ellman [3] - 2:22, 2:22, 32:3
Elm [1] - 146:16
elsewhere [1] - 180:11
embracement [2] - 96:4, 96:5
emotion [1] - 125:20
employed [2] - 180:10, 180:12
employee [1] - 168:7
employees [1] - 129:6
employing [1] - 158:10
empty [1] - 125:15
en [1] - 15:12
enable [2] - 51:11, 107:16
enables [1] - 162:6
enacted [6] - 8:25, 11:20, 49:10, 49:17, 115:13, 115:16
enactment [1] - 134:25
encourage [2] - 55:13, 79:15
encouraged [1] - 179:20
encyclopedia [2] - 144:13, 147:21
end [17] - 32:7, 32:16, 34:23, 88:21, 91:6, 102:12, 107:6, 139:18, 153:19, 154:1, 154:3, 161:2, 163:1, 177:12, 181:6, 181:21, 184:5
endeavor [1] - 43:1
ended [4] - 40:1, 86:4, 114:20, 156:17
endemic [1] - 66:11
ending [3] - 46:21, 61:3, 61:11
endorsement [1] - 131:20
ends [2] - 87:2, 136:15
enemies [1] - 58:21
enemy [1] - 57:20
energy [1] - 125:19
enforce [4] - 18:12, 137:19, 138:15, 144:3
enforcement [7] - 25:18, 25:21, 25:22, 137:3, 137:15, 138:23, 190:4
engaged [2] - 43:15, 103:14
engineer [3] - 111:11, 117:1, 126:11
engineering [1] - 106:10
English [13] - 15:17, 17:8, 24:2, 24:18, 24:23, 93:21, 95:21, 97:20, 111:17, 111:18, 111:25, 112:4
enjoy [1] - 104:8
enlighten [1] - 64:16
enormous [3] - 151:11, 161:23, 175:25
enrolled [1] - 173:5
entered [1] - 116:22
entire [6] - 52:12, 53:20, 88:1, 101:13, 105:9, 114:18
entirety [1] - 171:14
entities [1] - 127:8
entitled [3] - 167:6, 171:24, 193:9
entity [1] - 139:5
entrance [2] - 72:8, 72:9
environment [9] - 72:15, 103:5, 109:7, 121:19, 121:20, 121:21, 121:22, 121:24, 122:1
episodes [1] - 156:5
equal [3] - 14:19, 14:21, 15:11
equally [1] - 22:12
equals [1] - 101:18
equipped [1] - 139:3
error [1] - 66:13
especially [1] - 80:7
espoused [1] - 94:11
Esq [2] - 2:15, 2:22
ESQ [4] - 2:3, 2:4, 2:4, 2:11
essence [1] - 108:8
essentially [4] - 6:5, 6:14, 53:22, 153:22
establish [2] - 71:7, 89:7
established [4] - 71:9, 112:20, 129:5, 161:11
establishes [1] - 140:15
establishing [1] - 71:3
et [5] - 1:4, 1:8, 38:16, 112:3
eternal [1] - 87:3
ethnic [38] - 26:23, 27:25, 47:8, 48:9, 85:18, 92:20, 93:24, 93:25, 94:2, 101:20, 106:19, 113:25, 114:4, 117:12, 122:2, 122:7, 122:11, 135:19, 135:21, 140:15, 140:18, 140:20, 140:25, 147:8, 152:10, 152:13, 152:16, 152:20, 153:8, 165:4, 179:20, 181:9, 184:6, 184:12, 189:21
ethnically [7] - 107:20, 117:9, 117:17, 121:18, 121:20, 121:24, 122:3
ethnicity [2] - 117:18, 184:2
ethnographic [1] - 108:20
European [1] - 102:10
evening [1] - 192:4
everywhere [1] - 133:3
evidence [28] - 12:15, 13:3, 13:8, 26:8, 26:13, 29:20, 36:12, 38:4, 42:1, 60:13, 66:3, 76:15, 81:2, 82:19, 85:6, 85:8, 85:9, 88:1, 89:2, 90:1, 153:7, 163:15, 163:17, 163:18, 164:19, 170:13, 173:17, 176:23
evidently [2] - 61:25, 62:1
Evo [1] - 1:20
evolving [1] - 87:4
ex [1] - 139:11
exact [7] - 5:19, 24:1, 53:5, 98:16, 109:1, 130:20, 164:4
exactly [10] - 38:23, 72:7, 82:1, 88:14, 88:15, 126:23, 145:12, 145:14, 147:9, 188:21
exam [2] - 96:16, 106:9
Examination [2] - 3:5, 3:6
EXAMINATION [2] - 33:11, 106:1
examination [13] - 4:7, 30:23, 59:22, 96:11, 105:19, 105:25, 153:2, 175:16, 177:23, 182:12, 182:16, 190:17, 191:5
EXAMINATIONS [1] - 3:1
examine [9] - 9:5, 12:19, 13:16, 13:18, 29:14, 35:4, 42:14, 56:25, 77:1
examined [4] - 30:23, 43:22, 44:5, 44:11
examines [1] - 12:20
examining [1] - 12:21
example [8] - 56:11, 63:5, 63:6, 63:23, 104:23, 115:1, 120:20, 168:12
examples [5] - 39:11, 45:10, 45:23, 46:16, 179:23
exams [1] - 32:1
exceed [1] - 140:2
exceeding [1] - 124:3
excellent [4] - 139:16, 150:11, 150:13
except [3] - 25:11, 30:7, 36:16
exception [1] - 37:19
excerpts [1] - 87:24
exclude [4] - 29:21, 48:20, 49:14, 49:24
excuse [8] - 5:2, 5:22, 7:7, 8:3, 9:25, 37:23, 77:16, 163:3
excused [1] - 191:15
execute [1] - 112:23
executed [1] - 130:22
execution [1] - 179:15
executive [1] - 139:4
exercises [1] - 77:25
exhausted [1] - 103:1
exhausts [1] - 31:12
Exhibit [27] - 35:6, 35:18, 38:2, 56:5, 61:2, 62:9, 67:4, 70:24, 71:23, 75:10, 78:22, 80:20, 82:17, 85:5, 85:7, 87:24, 88:25, 89:15, 117:23, 140:13, 151:15, 153:11, 159:4, 178:14, 183:23, 185:21, 186:22
exhibit [19] - 8:24, 29:10, 34:24, 35:10, 36:10, 36:12, 60:10, 63:1, 63:2, 67:4, 82:19, 87:23, 89:1, 90:13, 90:19, 118:1, 119:23, 140:13, 186:23
exhibited [1] - 69:10
exhibiting [1] - 37:12
EXHIBITS [1] - 3:7
exhibits [14] - 5:17, 5:19, 6:3, 6:5, 6:19, 10:25, 22:22, 22:24, 34:13, 34:14, 34:16, 35:3, 96:22, 183:24
Exhibits [3] - 5:23, 6:13, 6:18
existed [1] - 153:6
expand [2] - 42:13, 79:4
expect [2] - 146:9, 192:18
expectation [1] - 52:9
expedition [1] - 15:13
expenses [1] - 109:14
experience [7] - 111:13, 111:17, 111:23, 112:1, 116:1, 125:23, 144:11
experienced [4] - 157:12, 161:15, 161:24, 165:13
experiences [1] - 112:5
expert [6] - 10:19, 10:20, 24:21, 31:19, 115:24, 181:3
expertise [2] - 80:18, 114:23
experts [1] - 31:15
explain [2] - 42:13, 90:10
explained [2] - 25:8, 74:14
exposed [1] - 102:14
express [4] - 176:17, 184:5, 184:8, 189:15
expressed [1] - 126:18
expresses [1] - 144:22
expressing [3] - 99:20, 134:16,

151:24	162:9, 179:1,	Figure [1] - 167:6	7:25, 8:3, 8:5, 8:8,	144:22
extending [2] -	179:14, 179:16	figure [5] - 120:12,	8:10, 8:14, 8:18,	former [1] - 142:3
151:18, 153:15	failures [2] - 105:6,	146:19, 146:21,	9:18, 9:21, 9:24,	forth [5] - 5:21, 7:6,
extensive [2] - 92:4,	126:22	148:25, 159:19	10:5, 10:10, 14:23,	13:6, 95:2, 191:25
153:6	fair [8] - 24:19, 26:5,	figures [1] - 28:19	15:5, 15:8, 15:15,	forward [11] - 55:7,
extent [5] - 9:4, 49:22,	36:5, 42:25, 59:9,	file [2] - 22:24, 30:5	15:18, 15:22, 16:9,	69:16, 83:22, 85:14,
55:23, 82:2, 176:23	59:16, 109:16, 192:7	filed [3] - 10:23, 27:6,	16:15, 16:18, 17:19,	85:15, 99:19,
exterior [1] - 94:23	fairly [1] - 92:4	27:11	17:23, 18:9, 18:13,	128:23, 128:25,
external [1] - 175:14	faith [3] - 9:12, 9:14,	files [1] - 28:11	18:20, 18:25, 19:7,	129:4, 129:14,
extra [1] - 164:22	9:15	final [7] - 22:4, 26:17,	19:10, 27:2	161:18
extracted [2] - 78:1,	Falcon [5] - 95:11,	30:4, 67:18, 68:3,	Fitzmaurice [4] - 5:5,	foundation [8] -
178:2	98:15, 99:1, 99:5,	68:12, 69:23	15:3, 21:20, 22:23	36:15, 36:21, 37:20,
extraordinarily [4] -	102:6	finalized [1] - 153:25	five [12] - 83:24,	42:22, 43:3, 43:12,
77:9, 111:14,	falcon [3] - 95:14,	finally [5] - 69:7, 94:4,	105:8, 107:23,	70:11, 171:8
114:19, 115:23	95:25, 96:3	95:6, 102:3, 174:7	107:24, 108:11,	founding [1] - 98:8
extraordinary [2] -	fall [3] - 52:14, 136:14,	findings [10] - 41:2,	174:22, 188:15,	four [5] - 61:6, 61:10,
10:2, 172:14	145:7	52:19, 82:12, 82:13,	188:23, 188:24,	88:13, 107:10, 140:2
extreme [1] - 164:20	falling [1] - 91:2	143:14, 143:17,	189:1, 189:3, 189:4	four-line [2] - 61:6,
extremely [3] - 14:14,	falsely [2] - 168:5,	161:9, 181:8, 181:9,	five-minute [1] - 189:4	61:10
50:20, 101:9	169:15	182:2	fix [6] - 83:18, 146:14,	four-year [1] - 88:13
<hr/>				
F				
<hr/>				
faced [2] - 14:19,	familiar [10] - 133:4,	fine [11] - 5:7, 30:5,	146:17, 146:25,	fourth [8] - 9:12, 63:4,
18:14	138:25, 139:10,	37:21, 50:6, 96:18,	147:3	107:6, 108:16,
facilitate [1] - 16:11	145:17, 148:9,	97:4, 167:16,	flag [1] - 162:13	110:6, 110:8, 110:9,
fact [45] - 14:14, 17:9,	149:24, 150:18,	182:25, 185:25,	flaws [1] - 162:25	150:23
20:5, 28:16, 36:13,	152:24, 167:19,	188:19, 189:3	Floor [1] - 2:12	fragmented [1] -
41:17, 43:21, 44:16,	180:15	finish [2] - 182:8,	flowers [3] - 90:22,	133:14
46:6, 51:9, 56:19,	familiarize [1] - 56:2	190:11	92:7, 162:23	frame [2] - 122:21,
65:8, 66:23, 68:16,	family [1] - 108:6	finished [3] - 42:15,	flowing [1] - 37:11	155:14
71:18, 72:11, 72:23,	famous [1] - 123:13	105:19, 153:25	Flowing [5] - 127:5,	framework [10] -
73:21, 74:20, 76:12,	far [4] - 25:5, 26:12,	firestorm [1] - 132:23	145:21, 146:1, 146:4	104:2, 122:14,
78:16, 84:3, 87:1,	124:3, 175:17	first [48] - 4:3, 5:15,	flows [1] - 80:1	122:15, 122:24,
89:19, 99:13, 99:16,	father [1] - 1:3	7:20, 8:17, 11:14,	fluency [2] - 111:18	161:11, 161:20,
99:18, 104:5,	fathers [1] - 98:8	38:12, 38:20, 58:20,	fluent [1] - 111:16	161:25, 163:7,
116:14, 121:18,	fathom [1] - 17:6	67:17, 68:2, 68:3,	focus [13] - 8:22,	179:23, 179:25
122:23, 130:21,	favor [6] - 6:15, 7:1,	68:11, 69:22, 71:9,	122:16, 122:17,	Franciosi [7] - 65:14,
131:13, 138:17,	15:24, 23:9, 24:1,	88:20, 91:15, 95:18,	135:9, 135:11,	167:9, 167:13,
145:1, 147:7, 152:2,	25:13	97:13, 98:1, 98:4,	135:13, 135:15,	167:18, 167:20,
158:11, 166:12,	fear [1] - 79:17	99:16, 99:18,	135:17, 150:8,	168:13, 168:19
166:23, 176:7,	February [4] - 60:3,	106:12, 110:1,	164:22, 187:24,	Franciosi's [3] -
176:9, 180:23,	84:25, 153:13, 154:8	112:15, 112:24,	188:1	65:21, 65:22, 170:4
191:12	Federal [1] - 1:20	114:3, 116:7,	focused [5] - 64:23,	Franklin [7] - 64:24,
factions [2] - 127:7,	federal [1] - 29:20	117:22, 119:24,	77:4, 109:5, 172:8,	99:25, 100:3, 100:5,
146:22	feedback [1] - 73:14	129:10, 141:17,	187:24	100:11, 100:13,
factor [3] - 9:8, 24:12	feelings [2] - 17:7,	141:20, 141:23,	focusing [1] - 43:1	130:16
factors [1] - 14:8	125:19	141:25, 143:7,	focussed [1] - 49:22	Franklin's [1] - 99:12
facts [9] - 28:19, 66:3,	felt [15] - 52:11, 54:20,	143:10, 151:13,	following [7] - 21:11,	frankly [2] - 16:2, 17:6
76:15, 99:24, 100:1,	73:13, 73:15, 73:17,	151:20, 151:21,	71:3, 74:25, 76:2,	free [3] - 9:7, 30:21
100:3, 100:10,	86:11, 91:1, 121:21,	155:21, 155:22,	96:3, 104:9, 151:7	Free [1] - 85:1
131:14	121:22, 136:23,	159:17, 186:23,	follows [1] - 4:2	freedom [2] - 100:6
factual [1] - 27:5	137:8, 143:3, 145:2,	192:5, 192:22	fondly [1] - 54:5	Freedom [2] - 152:24,
fade [1] - 20:12	146:5, 147:25	First [1] - 130:24	food [1] - 97:19	153:4
Fagen [3] - 126:24,	few [14] - 6:6, 20:3,	firsthand [2] - 46:3,	FOR [1] - 1:2	Freire [15] - 26:24,
127:2, 145:11	20:10, 104:25,	46:9	force [3] - 54:13,	27:6, 27:7, 27:11,
failed [2] - 113:4,	107:25, 108:1,	Fisher [1] - 4:25	94:23, 123:11	29:7, 30:1, 34:6,
126:21	117:17, 159:2,	fishing [1] - 15:13	forces [1] - 87:5	34:8, 35:25, 36:6,
failure [8] - 52:21,	164:4, 166:17,	FITZMAURICE [44] -	foregoing [1] - 193:7	36:7, 36:24, 36:25,
96:5, 105:2, 151:24,	171:16, 188:13,	2:4, 5:9, 5:11, 5:22,	foresee [1] - 140:1	152:24, 153:4
	189:9, 191:17	5:25, 6:12, 6:18,	form [1] - 31:8	Freire's [3] - 27:24,
	Fifth [1] - 2:5	6:23, 7:1, 7:8, 7:10,	formally [1] - 34:15	57:3, 64:2
	fight [1] - 44:19	7:14, 7:19, 7:22,	formed [2] - 112:5,	frequently [2] - 16:2,

187:19
Friday [7] - 30:20,
 31:24, 32:2, 32:15,
 32:23, 192:1, 192:10
friend [2] - 1:4, 148:17
friends [2] - 108:6,
 121:23
front [9] - 14:20,
 85:24, 86:16, 86:17,
 90:19, 119:12,
 153:10, 181:11,
 185:21
full [5] - 55:23, 98:1,
 98:4, 172:16, 193:8
full-bodied [1] -
 172:16
fully [5] - 54:17, 100:2,
 146:22, 165:16,
 165:23
fun [2] - 124:7, 151:12
functions [2] - 188:3,
 188:6
fundamental [3] -
 109:18, 151:10,
 185:15
funding [3] - 156:4,
 186:11, 186:14
funds [10] - 52:23,
 53:3, 53:9, 53:12,
 53:15, 53:25, 83:14,
 83:22, 83:24, 84:6
furious [2] - 177:13,
 177:14
FURTHER [1] - 193:7
furthermore [1] - 11:4
fury [1] - 162:23
future [1] - 152:4

G

gaff [1] - 163:6
gain [7] - 72:8, 107:14,
 137:4, 149:22,
 150:13, 168:2,
 168:24
gains [14] - 109:1,
 110:2, 110:11,
 128:3, 128:21,
 145:24, 149:14,
 149:17, 149:19,
 149:23, 150:9,
 156:20, 168:15,
 170:5
galvanize [1] - 86:3
game [7] - 86:21,
 128:6, 128:23,
 128:24, 129:3,
 133:9, 188:18
gap [4] - 150:18,
 150:24, 151:1, 151:3

GATE [4] - 173:5,
 173:6, 173:22
gathered [5] - 39:9,
 39:16, 39:23, 41:24,
 75:25
gathering [1] - 43:5
geez [2] - 111:24,
 113:11
General [2] - 2:19,
 2:19
general [13] - 48:19,
 71:6, 72:6, 78:19,
 82:12, 94:15,
 132:13, 133:7,
 175:12, 181:7,
 181:8, 182:1, 187:19
generally [6] - 56:2,
 81:22, 120:11,
 135:8, 136:14,
 170:10
generated [1] - 26:11
genius [1] - 167:25
get-go [1] - 151:20
Gifted [1] - 173:6
gist [1] - 144:6
given [6] - 11:3, 21:21,
 84:3, 84:4, 150:11,
 190:9
goal [10] - 107:18,
 110:1, 111:1, 112:8,
 115:7, 151:4, 151:8,
 157:4, 158:5
goals [5] - 107:2,
 109:23, 129:2,
 129:15, 151:2
gold [2] - 110:4,
 110:25
golden [1] - 94:13
Gonzales [1] - 61:12
GONZÁLEZ [2] - 1:3,
 1:3
gosh [1] - 163:5
Gotshal [1] - 2:3
governing [6] - 48:18,
 48:20, 49:13, 133:5,
 133:22
government [6] -
 23:22, 26:21, 27:20,
 93:8, 142:24, 144:9
Government [4] -
 28:4, 28:11, 28:12,
 29:22
government/social [1]
 - 174:16
governor [1] - 148:20
governors [1] - 148:14
graceful [1] - 103:16
graciously [1] - 97:10
grade [11] - 107:5,
 107:6, 108:2, 110:7,

110:8, 110:9, 111:7,
 150:8, 150:16,
 150:23
graders [7] - 108:16,
 108:17, 108:18,
 110:9, 110:10,
 110:13, 169:7
grades [4] - 150:1,
 150:3, 150:6
graduate [2] - 169:14,
 169:24
graduation [11] -
 65:17, 65:23, 169:5,
 169:6, 169:7, 169:8,
 169:9, 169:15,
 169:17, 169:21,
 170:2
grain [3] - 78:15, 80:1,
 185:5
Grammy [1] - 93:15
granted [2] - 5:1,
 14:20
grave [1] - 64:7
grease [1] - 115:19
great [5] - 58:18,
 58:19, 64:11,
 161:19, 170:23
grew [5] - 107:22,
 111:3, 117:5,
 117:12, 125:24
grind [2] - 114:24,
 115:25
grinding [1] - 185:9
gringo [1] - 57:21
grips [2] - 69:14,
 83:17
ground [3] - 18:6,
 26:5, 115:2
grounds [1] - 15:12
group [17] - 24:15,
 93:15, 93:25, 94:2,
 94:23, 110:13,
 112:19, 113:23,
 114:2, 115:7, 123:3,
 135:19, 135:21,
 141:1, 165:12,
 169:8, 169:20
groups [10] - 64:4,
 64:5, 114:7, 114:14,
 114:16, 114:17,
 114:22, 122:7, 147:8
growing [3] - 121:17,
 125:13, 125:14
Guam [1] - 148:6
guess [8] - 27:8,
 28:21, 46:19, 47:23,
 51:6, 51:18, 117:16,
 191:3
guest [1] - 174:24
Guevara [7] - 33:25,

64:21, 64:23,
 130:15, 130:18,
 131:12, 131:20
guide [1] - 165:1
guy [1] - 119:8
guys [1] - 103:25

H

half [4] - 32:23, 57:4,
 105:13, 174:18
hand [2] - 24:10, 35:9
handle [7] - 22:24,
 50:24, 95:10, 95:14,
 101:10, 127:7, 148:1
handled [1] - 101:7
hands [1] - 148:18
hang [1] - 124:4
happy [5] - 5:18, 6:4,
 16:11, 60:10, 191:2
hard [10] - 28:10,
 35:12, 113:6, 123:5,
 123:9, 124:5, 124:6,
 124:7, 125:25,
 137:21
Harvard [2] - 107:17,
 109:8
hate [2] - 125:18,
 190:10
hateful [1] - 99:6
HB2281 [5] - 6:14,
 134:25, 135:10,
 136:5, 140:9
head [4] - 130:23,
 131:16, 148:13,
 182:17
headline [1] - 112:14
heads [1] - 137:1
heal [6] - 54:18, 85:16,
 85:22, 133:18,
 146:21, 153:22
healing [1] - 181:22
healthy [4] - 105:14,
 120:15, 121:10
hear [9] - 84:17,
 84:20, 90:2, 99:20,
 131:24, 132:15,
 182:22, 190:15,
 192:17
heard [5] - 11:4,
 19:20, 134:16,
 170:3, 180:8
Hearing [1] - 180:16
hearing [11] - 85:24,
 99:11, 118:13,
 124:21, 124:23,
 124:25, 132:2,
 135:4, 135:7,
 135:19, 135:25
hearings [4] - 86:15,

116:6, 145:5, 180:13
hearsay [4] - 27:22,
 28:13, 29:24, 90:10
heavier [1] - 192:19
heavily [3] - 121:20,
 122:13, 149:12
Heights [1] - 14:7
held [1] - 193:9
help [22] - 11:12,
 29:16, 60:9, 70:23,
 107:19, 109:18,
 113:17, 115:8,
 123:10, 129:12,
 129:15, 151:19,
 151:24, 157:4,
 158:6, 158:10,
 162:7, 165:1,
 172:16, 178:7,
 189:25
helped [2] - 146:2,
 187:22
helpful [2] - 60:6,
 105:12
helping [4] - 45:3,
 123:5, 165:3, 187:25
helps [1] - 171:22
hereby [3] - 52:19,
 83:3, 193:3
herein [1] - 193:9
hero [1] - 131:15
Hibbs [15] - 42:20,
 43:2, 43:9, 50:19,
 56:1, 68:25, 69:13,
 73:14, 74:2, 147:15,
 148:2, 154:16,
 156:24, 171:18,
 176:18
Hibbs' [1] - 147:20
high [20] - 56:14, 59:2,
 66:12, 74:21, 77:4,
 104:3, 106:14,
 109:19, 111:20,
 147:10, 155:3,
 160:2, 164:17,
 169:7, 169:16,
 169:19, 174:13,
 174:22, 175:5, 176:2
High [1] - 94:5
high-class [1] -
 147:10
high-powered [1] -
 155:3
higher [3] - 107:14,
 149:21, 159:24
highest [9] - 106:21,
 108:2, 108:3, 110:1,
 110:2, 110:10,
 110:15, 110:17
highlight [1] - 80:22
highlighted [5] -

- 119:24, 125:9,
159:19, 160:19,
161:2
highly [14] - 15:22,
19:17, 43:25, 69:18,
72:15, 77:6, 77:11,
80:4, 91:6, 92:10,
101:22, 114:3,
165:4, 177:20
himself [1] - 17:12
hint [1] - 139:20
Hip [1] - 93:22
hip [1] - 94:2
Hip-Hop [1] - 93:22
hip-hoppers [1] - 94:2
hire [1] - 51:3
Hispanic [13] - 108:23,
109:17, 111:2,
111:14, 117:19,
121:21, 122:1,
122:6, 122:13,
128:2, 150:25,
159:22, 160:3
Hispanics [6] - 64:6,
101:25, 110:17,
110:19, 122:4, 180:1
historical [4] - 14:6,
14:8, 131:7, 165:8
history [11] - 20:4,
20:6, 57:16, 99:23,
100:10, 104:12,
130:20, 147:5,
165:5, 174:15, 187:8
History [3] - 60:8,
87:23, 93:4
Hitler [3] - 98:17,
131:3, 131:12
Hitler's [1] - 98:17
hmm [13] - 78:16,
88:23, 96:1, 98:12,
114:15, 122:22,
158:24, 164:15,
172:4, 173:8,
173:25, 174:12,
175:7
hold [2] - 21:9, 87:8
holding [1] - 123:17
holiday [1] - 192:17
home [3] - 24:7,
111:24, 111:25
homeless [2] -
106:12, 108:18
Honeywell [1] -
111:11
Honor [125] - 4:16,
5:8, 5:9, 5:22, 6:1,
6:2, 6:12, 7:2, 7:8,
7:10, 7:14, 7:19,
7:22, 7:25, 8:3, 8:11,
8:19, 9:10, 9:12,
9:18, 10:5, 10:19,
11:8, 14:13, 14:23,
15:1, 15:8, 15:13,
15:15, 15:19, 15:22,
16:9, 16:15, 16:18,
16:20, 17:15, 17:19,
18:2, 18:10, 18:13,
18:25, 19:7, 19:10,
19:23, 21:12, 21:17,
26:20, 27:3, 29:5,
30:10, 30:13, 30:15,
31:20, 32:6, 32:18,
32:25, 33:2, 33:6,
34:11, 34:20, 35:2,
35:5, 35:10, 36:9,
36:11, 36:16, 37:2,
37:5, 38:3, 38:4,
47:14, 47:16, 54:8,
59:16, 59:19, 59:24,
60:6, 60:22, 62:5,
67:1, 68:7, 70:3,
82:18, 82:19, 84:10,
85:5, 85:6, 87:10,
87:14, 87:19, 87:21,
88:4, 89:1, 89:5,
89:10, 89:13, 90:1,
90:2, 90:14, 97:1,
97:3, 97:5, 97:9,
104:16, 104:18,
105:19, 118:6,
139:20, 140:1,
140:3, 154:13,
171:7, 171:10,
185:25, 188:12,
188:20, 189:2,
189:5, 189:9, 190:6,
190:8, 190:14,
190:19, 192:12
Honorable [1] - 1:13
Hop [1] - 93:22
hope [5] - 146:11,
184:5, 184:8,
184:11, 187:10
hoped [2] - 86:22,
86:24
hopefully [2] - 30:21,
138:11
hopelessly [1] -
133:13
hoping [2] - 86:11,
181:21
hoppers [1] - 94:2
Horne [14] - 12:18,
31:14, 31:21, 38:14,
38:17, 52:11, 54:19,
135:13, 137:24,
138:9, 142:3, 145:1,
151:21, 154:20
Horne's [7] - 97:24,
98:11, 129:11,
142:6, 143:13,
144:3, 152:10
host [1] - 62:17
hot [1] - 177:14
hour [2] - 190:9
hours [5] - 13:14,
20:3, 102:24,
115:25, 154:22
House [1] - 116:8
house [3] - 103:18,
107:23, 116:5
housekeeping [2] -
34:11, 87:21
Hrabluk [15] - 42:20,
43:10, 50:20, 56:1,
69:13, 73:11, 73:15,
147:19, 149:1,
154:17, 154:18,
155:8, 156:23,
161:14, 181:2
Hrabluk's [1] - 43:2
hug [1] - 148:16
huge [3] - 61:20,
161:13, 162:13
hugely [1] - 127:4
human [3] - 87:4,
87:6, 108:9
hundred [7] - 41:13,
62:15, 85:18,
104:25, 107:12,
107:13, 169:14
hundreds [3] - 18:17,
18:21
hungry [1] - 125:14
Hunnicutt [6] - 78:24,
78:25, 79:7, 79:8,
79:12, 79:22
Hup [1] - 114:14
HUPPENTHAL [1] -
3:4
Huppenthal [92] - 4:5,
6:15, 6:24, 9:6, 9:7,
11:4, 12:18, 12:21,
13:4, 13:17, 15:24,
16:21, 17:20, 20:1,
21:7, 21:23, 22:6,
22:9, 23:25, 24:17,
25:10, 25:12, 29:5,
30:22, 30:25, 33:9,
33:13, 33:15, 35:17,
36:12, 36:24, 37:15,
38:9, 41:4, 42:4,
42:10, 43:21, 44:16,
45:5, 46:24, 48:13,
51:8, 51:10, 54:11,
56:6, 57:24, 59:23,
60:24, 62:10, 65:25,
66:22, 68:6, 70:23,
72:11, 72:23, 74:4,
74:20, 75:4, 75:11,
78:6, 78:23, 79:13,
80:20, 87:1, 88:10,
88:24, 89:8, 89:15,
89:19, 89:21, 90:16,
94:5, 95:6, 95:10,
95:16, 96:11, 96:15,
97:13, 97:23,
101:12, 102:3,
102:19, 104:5,
104:9, 105:17,
106:3, 107:21,
109:12, 139:17,
188:14, 190:10,
190:16
Huppenthal's [9] -
7:3, 11:13, 17:3,
23:8, 26:5, 60:1,
60:2, 79:9, 117:25
-
- I**
-
- idea** [6] - 45:17, 45:20,
64:2, 122:25, 162:1,
188:17
identified [2] - 115:1,
143:13
identify [4] - 5:18,
114:23, 115:8, 160:1
identifying [1] - 132:5
ideological [1] - 132:3
Ill [1] - 161:1
ill [2] - 56:19, 125:19
illegalization [1] -
99:15
ills [1] - 129:12
image [1] - 143:24
immediately [3] -
118:14, 185:7, 185:8
immigrant [3] - 11:9,
11:16, 14:12
immigrants [3] -
15:19, 111:19,
135:24
impact [2] - 9:8, 66:6
impairment [1] - 56:15
impeachment [3] -
54:7, 60:5, 104:17
impeccable [2] -
42:19, 43:7
impeccably [1] -
120:13
imperialism [1] -
57:22
implement [4] -
114:24, 155:17,
184:6, 184:12
implementation [5] -
115:4, 155:9,
155:20, 156:21,
157:3
-
- important** [10] - 24:12,
31:22, 74:16, 95:9,
113:8, 113:18,
126:2, 155:17,
175:4, 188:3
importantly [3] - 42:8,
42:9, 42:18
impose [2] - 55:15,
190:10
imposed [2] - 55:12,
55:14
imposing [1] - 191:13
imposition [1] - 54:12
impression [1] -
181:19
improper [1] - 156:21
improve [1] - 71:11
improved [2] - 168:20,
170:8
improvement [1] -
177:16
IN [1] - 1:1
in-depth [1] - 66:16
inadequacy [1] -
92:14
inadequate [1] - 73:9
inappropriate [6] -
63:24, 80:24, 104:2,
161:22, 177:19
incidents [1] - 140:24
include [3] - 94:6,
159:25, 165:11
included [4] - 19:1,
59:4, 167:10, 171:5
inclusive [1] - 165:17
income [1] - 128:2
incomplete [1] - 70:5
incorporated [1] -
44:3
increase [3] - 111:1,
112:8, 187:7
incredibly [1] - 127:17
inculcate [1] - 64:13
independent [5] -
42:2, 75:23, 76:5,
168:17, 178:3
independently [5] -
39:10, 39:16, 41:25,
93:16, 180:12
INDEX [2] - 3:1, 3:7
indicate [2] - 71:12,
172:2
indicated [4] - 75:17,
75:18, 96:22, 161:3
indicates [1] - 47:7
indicating [1] - 93:2
indication [1] - 80:10
indirectly [2] - 132:1,
134:2
indistinct [1] - 142:21

individual ^[1] - 150:15
individualism ^[1] - 87:5
individuals ^[1] - 179:21
indoctrinate ^[1] - 64:15
indoctrination ^[6] - 94:19, 104:3, 134:6, 134:7, 134:18, 134:20
indoctrination-like ^[1] - 134:20
indoctrination-type ^[1] - 134:18
indulge ^[1] - 188:13
infected ^[3] - 99:8, 99:22, 100:8
infer ^[3] - 25:24, 41:16
infers ^[1] - 27:15
inform ^[2] - 57:10, 57:12
information ^[27] - 10:17, 18:3, 20:20, 43:5, 75:22, 75:25, 76:4, 78:13, 79:19, 79:21, 79:25, 80:4, 80:8, 96:23, 142:20, 158:7, 159:25, 165:12, 166:1, 169:1, 170:7, 171:5, 171:23, 177:1, 177:3, 179:4, 183:22
informed ^[1] - 80:7
initiate ^[1] - 187:16
injustice ^[5] - 8:1, 8:20, 10:16, 22:5, 22:21
innovated ^[1] - 127:21
input ^[1] - 187:6
inserted ^[1] - 17:3
inside ^[1] - 54:21
inspect ^[1] - 54:24
inspected ^[2] - 40:3, 176:25
inspecting ^[1] - 40:7
inspection ^[4] - 40:2, 41:1, 42:2, 176:24
inspectors ^[2] - 40:23, 69:3
inspirational ^[1] - 165:6
instance ^[5] - 17:5, 23:24, 24:20, 25:19, 115:17
instead ^[1] - 156:8
instruction ^[2] - 1:8, 38:14
instruction ^[13] - 26:7, 106:8, 109:24,

137:14, 139:12, 141:6, 141:14, 145:9, 149:8, 149:25, 151:3, 172:6, 174:8
instructor ^[1] - 173:11
instructs ^[1] - 83:3
integrity ^[1] - 76:9
intellectual ^[3] - 66:13, 103:15, 167:2
intellectually ^[1] - 102:13
intend ^[2] - 118:17, 189:15
intense ^[1] - 132:24
intensity ^[1] - 103:6
intensive ^[1] - 75:19
intent ^[3] - 14:14, 14:17, 52:2
intention ^[2] - 52:15, 144:23
interacted ^[2] - 78:20, 120:9
interacting ^[1] - 69:17
interaction ^[2] - 120:4, 183:15
interactions ^[5] - 46:12, 46:16, 72:14, 78:2, 78:4
interest ^[3] - 119:22, 123:8, 123:9
interested ^[1] - 37:10
internal ^[1] - 132:23
internally ^[1] - 55:5
Internet ^[1] - 95:7
internet ^[1] - 20:20
interpret ^[1] - 165:25
interpreted ^[1] - 161:14
interrogatories ^[1] - 17:1
interrupt ^[1] - 41:5
interview ^[7] - 62:10, 62:12, 62:14, 62:19, 62:22, 85:1, 85:4
interviewed ^[3] - 62:16, 62:18, 79:9
interviewer ^[1] - 62:25
interviews ^[3] - 62:12, 67:21, 72:1
introduce ^[4] - 12:1, 26:1, 60:7, 137:6
introduced ^[3] - 11:1, 13:8, 115:16
Introduction ^[2] - 56:12, 93:22
investigate ^[2] - 22:7, 188:9
investigation ^[14] - 18:15, 54:20, 67:7,

75:19, 144:6, 147:11, 147:14, 154:15, 157:8, 157:15, 157:19, 157:23, 158:1, 178:20
investigations ^[3] - 187:16, 187:24, 188:1
investigators ^[1] - 79:15
invited ^[1] - 124:25
involved ^[2] - 142:8, 158:3
involvement ^[1] - 132:8
IQ ^[1] - 167:24
irregular ^[1] - 176:8
irregularity ^[1] - 183:14
irrelevant ^[2] - 17:6, 47:12
Isquierdo ^[1] - 129:24
issuance ^[1] - 179:8
issue ^[26] - 17:17, 20:14, 26:6, 30:5, 46:1, 55:9, 68:24, 69:14, 77:10, 79:2, 85:23, 86:10, 86:17, 86:22, 102:23, 115:19, 142:20, 161:13, 176:6, 178:7, 181:17, 183:12, 184:14, 184:21, 189:21
issued ^[16] - 37:16, 38:15, 38:17, 38:24, 67:6, 84:12, 84:25, 89:16, 91:16, 129:10, 142:3, 178:10, 178:11, 181:12, 183:20, 184:23
issues ^[23] - 20:12, 25:6, 26:4, 34:10, 50:6, 53:21, 68:17, 70:15, 70:16, 70:22, 73:17, 74:1, 91:2, 92:20, 138:1, 141:22, 142:8, 143:2, 185:12, 187:21, 188:4, 188:8, 188:10
issuing ^[6] - 91:5, 143:16, 143:17, 143:19, 143:25, 177:6
itself ^[6] - 55:8, 63:7, 79:14, 86:12, 175:13, 177:21

J

JAMES ^[1] - 2:11
JAMIESON ^[1] - 193:3
Jamieson ^[3] - 1:19, 193:15, 193:16
January ^[28] - 38:13, 38:18, 46:22, 62:11, 66:2, 82:17, 83:10, 88:15, 88:16, 88:21, 89:8, 93:1, 97:23, 97:24, 98:10, 98:23, 98:24, 99:1, 99:3, 99:4, 99:9, 100:23, 101:13, 101:14, 141:20, 158:18, 186:25
Jennifer ^[7] - 90:22, 92:7, 92:22, 162:23, 163:2, 177:12
JESÚS ^[1] - 1:3
jimmy ^[1] - 111:11
Jimmy ^[1] - 111:5
job ^[6] - 91:7, 91:12, 146:5, 162:17, 175:21, 184:17
JOHN ^[1] - 3:4
John ^[16] - 43:24, 50:20, 69:14, 73:14, 78:24, 79:7, 89:20, 123:13, 126:22, 145:11, 145:13, 157:10, 157:12, 157:16, 181:2
John's ^[1] - 111:4
Johnson ^[3] - 163:2, 177:13
joint ^[1] - 5:12
Jorge ^[7] - 35:6, 38:6, 46:22, 56:11, 57:15, 63:3, 79:4
journal ^[3] - 63:25, 101:19, 102:2
journey ^[1] - 23:5
judge ^[12] - 81:19, 81:21, 81:24, 82:4, 82:15, 98:15, 98:21, 180:9, 180:10, 181:12, 181:17, 181:24
judge's ^[2] - 82:12, 181:8
judged ^[1] - 140:16
judgment ^[2] - 14:20, 44:10
judicial ^[23] - 4:12, 4:17, 4:21, 7:11, 8:10, 8:15, 15:25, 16:3, 16:4, 16:17, 16:20, 16:23, 21:19,

21:24, 23:4, 26:14, 28:15, 28:16, 28:19, 28:23, 28:24, 29:18, 186:4
judicially ^[1] - 7:15
Judy ^[2] - 119:19, 129:20
July ^[1] - 192:15
June ^[14] - 1:6, 10:23, 10:24, 37:16, 38:9, 38:23, 39:12, 67:5, 67:8, 75:12, 102:19, 178:10, 178:16, 193:12
just. ^[1] - 93:16
justice ^[1] - 174:16
justified ^[1] - 50:13
justify ^[1] - 57:18
justifying ^[1] - 57:17
JW ^[1] - 2:11

K

Karl ^[1] - 102:10
Kathy ^[14] - 42:20, 43:2, 50:19, 69:13, 73:10, 73:15, 147:19, 149:1, 154:16, 154:18, 155:8, 156:23, 157:16, 181:2
Kayenta ^[1] - 112:18
keep ^[2] - 138:8, 188:3
keeping ^[1] - 121:9
kept ^[1] - 19:11
key ^[7] - 40:16, 40:24, 41:1, 41:24, 50:4, 54:16, 121:10
kicked ^[1] - 185:2
kid ^[2] - 103:17, 121:25
kids ^[10] - 94:22, 100:12, 107:9, 107:16, 112:7, 117:17, 122:5, 123:4, 175:9, 190:1
kind ^[34] - 8:6, 10:2, 25:2, 26:12, 28:4, 29:17, 40:7, 40:15, 63:15, 73:22, 94:9, 94:19, 95:1, 114:17, 114:22, 115:19, 118:22, 123:11, 127:23, 128:6, 130:8, 131:5, 139:4, 160:16, 168:16, 169:25, 172:18, 177:7, 177:16, 182:10, 185:19, 187:15, 192:20

kinds [2] - 49:25, 147:17	128:12	19:5, 19:8, 32:7, 100:9, 131:5, 142:2	162:6, 177:9	126:3
king [1] - 116:16	largest [4] - 128:10, 128:11, 128:13, 128:19	learning [1] - 100:2	lessons [1] - 164:7	living [1] - 123:25
KKK [1] - 101:18		least [4] - 32:23, 119:3, 128:9, 132:19	letter [8] - 150:8, 150:16, 153:12, 153:13, 153:15, 154:8, 186:25, 187:3	livings [1] - 124:2
knell [3] - 53:15, 55:15, 83:15	last [17] - 32:7, 50:1, 71:20, 80:20, 83:1, 88:12, 88:19, 89:16, 90:25, 96:9, 96:21, 104:9, 105:5, 105:13, 136:11, 151:18, 152:2	leave [1] - 173:11	level [9] - 100:10, 107:6, 110:7, 172:20, 174:22, 176:13, 179:13, 179:14, 181:20	Liz [1] - 145:11
knowledge [17] - 38:25, 41:14, 43:16, 43:18, 46:4, 46:9, 73:1, 76:18, 77:20, 77:22, 112:4, 134:14, 144:13, 147:21, 154:25, 164:16, 176:15	late [3] - 7:7, 13:9, 20:14	lectern [2] - 10:14, 15:4	levels [3] - 91:1, 92:12, 110:8	LLC [2] - 2:11, 2:22
knowledgeable [1] - 144:18	Latino [5] - 106:23, 114:11, 115:7, 174:14, 174:22	leeway [1] - 191:13	liberal [1] - 149:1	LLP [1] - 2:3
known [4] - 10:21, 113:2, 113:14, 155:9	Latinos [1] - 189:24	left [3] - 31:18, 104:7, 106:7	liberals [4] - 86:7, 101:2, 104:23, 149:2	loaded [1] - 29:22
knows [8] - 14:13, 24:6, 25:21, 31:6, 90:8, 111:24, 185:23	Laura [8] - 78:8, 78:12, 78:14, 78:16, 79:10, 79:16, 79:18, 80:15	legal [8] - 8:20, 8:22, 49:18, 50:16, 67:19, 68:12, 69:24, 71:17	liberation [1] - 58:25	loads [1] - 41:25
knuckled [2] - 100:20, 103:14	Law [3] - 2:7, 2:14, 2:15	legislation [33] - 6:20, 8:25, 9:5, 10:20, 11:7, 11:15, 11:20, 12:7, 12:16, 14:9, 14:12, 14:16, 15:9, 15:14, 15:23, 16:2, 16:5, 20:2, 21:3, 21:7, 25:20, 114:19, 114:20, 114:21, 115:13, 115:16, 115:20, 116:9, 116:10, 132:6, 132:8, 148:10	life [6] - 111:15, 123:15, 123:20, 125:17, 125:22, 126:12	local [1] - 174:24
KRS [1] - 93:23	law [24] - 25:18, 25:21, 25:22, 54:1, 55:8, 81:11, 81:19, 81:21, 81:24, 82:3, 82:4, 82:14, 98:14, 98:21, 132:4, 170:15, 180:9, 180:10, 181:8, 181:12, 181:17, 181:24, 184:20, 186:1	legislative [12] - 6:6, 6:10, 6:22, 7:11, 7:13, 14:14, 20:4, 23:5, 26:9, 26:15, 116:3, 118:16	light [1] - 10:4	locking [1] - 45:1
KRS-one [1] - 93:23	law-abiding [1] - 184:20	legislator [8] - 20:1, 20:7, 23:14, 23:23, 25:7, 132:3, 136:7, 168:12	lightest [2] - 187:20, 188:5	logic [1] - 143:18
Kyman [1] - 2:19	laws [1] - 114:21	legislators [2] - 11:20, 23:20	lightly [2] - 157:20, 181:5	logical [2] - 72:21, 172:19
<hr/>				
L				
labeled [2] - 98:25, 134:19	lay [1] - 190:1	legislature [11] - 11:5, 24:19, 26:1, 114:19, 115:11, 116:2, 116:22, 131:23, 142:12, 144:16, 149:8	limitations [1] - 80:22	long-time [1] - 144:17
lack [10] - 13:21, 24:24, 161:22, 162:11, 177:14, 177:15, 177:16, 178:17	layers [2] - 164:22, 175:20	length [3] - 55:17, 151:16, 159:1	limited [11] - 39:5, 39:8, 69:1, 69:12, 73:16, 74:3, 75:25, 76:1, 171:19, 171:20, 176:19	look [60] - 21:8, 34:8, 35:11, 35:17, 38:2, 48:15, 50:21, 52:18, 54:16, 55:6, 56:5, 57:14, 59:12, 61:11, 62:9, 63:1, 63:14, 65:3, 65:17, 66:15, 68:2, 70:24, 71:24, 73:3, 75:10, 76:23, 79:3, 81:7, 82:23, 85:4, 92:25, 93:2, 93:17, 100:19, 103:12, 107:4, 116:20, 119:24, 120:22, 121:7, 121:16, 125:9, 126:8, 127:15, 133:11, 152:2, 152:12, 162:9, 163:8, 163:13, 167:5, 167:17, 168:11, 171:21, 171:23, 173:3, 173:22, 174:13, 186:22
lady [2] - 79:10, 119:25	lawyers [2] - 42:13, 191:17	Leighton [5] - 78:8, 78:12, 78:14, 78:16, 79:18	line [11] - 19:12, 60:2, 60:5, 61:6, 61:10, 89:5, 94:18, 127:4, 145:20, 182:6	Look [1] - 91:9
laid [3] - 63:25, 99:12, 99:18	lay [1] - 190:1	lemonade [1] - 104:24	Line [2] - 75:1	looked [14] - 29:6, 34:7, 35:25, 36:17, 38:1, 43:9, 43:10, 47:24, 120:13, 145:24, 159:10, 160:9, 164:16, 177:22
Lak'ech [3] - 94:7, 94:8, 95:3	layers [2] - 164:22, 175:20	length [3] - 55:17, 151:16, 159:1	lined [1] - 31:23	looking [23] - 39:2, 40:5, 47:3, 49:21, 49:23, 54:16, 55:4, 61:20, 65:23, 67:13, 68:23, 69:4, 70:13, 76:24, 83:23, 85:14, 150:14, 161:20, 161:21, 167:11, 170:5
language [21] - 17:8, 24:3, 24:8, 24:11, 24:14, 24:21, 24:23, 24:24, 25:1, 103:16, 112:21, 113:4, 113:9, 113:16, 113:19, 113:21, 125:9, 143:4, 151:17, 160:20	laying [1] - 165:7	Leslie [1] - 2:19	lines [6] - 21:6, 61:14, 61:22, 62:3, 185:20, 188:4	looks [4] - 10:18, 30:20, 159:15, 167:9
languages [1] - 112:25	lays [1] - 162:4	less [4] - 77:3, 122:17, 128:1, 160:6	liquidity [1] - 54:14	Lopez [1] - 99:20
large [7] - 40:13, 55:23, 61:23, 164:21, 177:19, 178:1, 187:13	leader [6] - 45:11, 147:20, 155:7, 161:15, 161:19, 165:20	lesser [1] - 152:4	list [6] - 8:25, 25:15, 32:11, 34:25, 154:9, 183:24	Lori [1] - 79:7
largely [2] - 23:20, 92:2	leaders [5] - 50:19, 103:15, 127:17, 161:24, 165:24	lesson [18] - 19:5, 19:8, 19:11, 52:7, 53:21, 69:4, 69:10, 77:25, 85:24, 86:15, 91:3, 119:12, 130:8, 161:16, 162:5,	listed [2] - 4:22, 6:8	
larger [2] - 128:8,	leadership [6] - 51:2, 105:2, 105:6, 127:1, 127:6, 127:23	learn [5] - 19:10, 108:10, 113:19, 113:21, 175:5	listened [1] - 78:20	
	leaderships [1] - 126:21	learned [7] - 19:4,	lists [2] - 48:19, 80:24	
	leafing [1] - 55:24		literally [6] - 64:8, 143:17, 144:14, 144:17, 148:5, 189:1	
	learn [5] - 19:10, 108:10, 113:19, 113:21, 175:5		literature [5] - 50:6, 101:8, 147:6, 174:15, 174:22	
	learned [7] - 19:4,		live [1] - 17:17	
			lived [2] - 79:2, 117:14	
			lives [4] - 79:16, 123:12, 125:25,	

Los [1] - 58:19
lose [3] - 104:21,
 104:22, 138:17
loss [1] - 12:13
lost [4] - 20:6, 20:9,
 105:12, 127:10
love [1] - 101:2
loved [2] - 132:3,
 132:4
low [2] - 126:17, 128:2
lower [1] - 55:12
Lucero [4] - 111:6,
 111:7, 111:23, 126:9
Luis [3] - 111:5,
 111:10, 126:10
LUNA [1] - 2:4
lunchtime [2] -
 107:25, 151:5

M

machine [3] - 1:23,
 93:10, 93:15
machinery [1] - 23:22
Machine's [1] - 93:5
Magnet [1] - 93:4
magnet [2] - 93:20,
 94:5
magnitude [1] - 127:7
mail [7] - 78:23, 79:4,
 79:7, 79:8, 79:12,
 79:14
mails [3] - 132:12,
 132:13, 132:25
main [3] - 86:25,
 120:3, 122:16
maintain [1] - 101:5
major [1] - 23:3
majority [3] - 75:22,
 76:4, 128:15
makeup [4] - 27:25,
 106:19, 106:20,
 108:20
man [2] - 11:5, 57:24
management [2] -
 127:20, 148:11
Manges [1] - 2:3
manifest [5] - 8:1,
 8:20, 10:16, 22:5,
 22:21
manner [1] - 157:4
Marcelino [4] - 111:5,
 111:7, 111:23, 126:9
March [4] - 101:1,
 101:12, 101:17
Mark [2] - 133:20,
 191:1
marked [2] - 55:24,
 153:10
Martin [3] - 62:17,

62:23, 63:4
Martinez [1] - 2:7
MARTINEZ [1] - 2:8
Marx [1] - 102:10
Marxist [1] - 102:9
MAS [83] - 17:10,
 37:17, 38:10, 46:20,
 47:9, 49:2, 50:13,
 51:22, 52:16, 65:8,
 65:25, 67:10, 69:10,
 74:20, 75:13, 81:10,
 81:24, 82:5, 82:7,
 83:15, 84:13, 87:1,
 90:7, 95:13, 98:25,
 99:2, 101:17,
 101:20, 104:24,
 105:9, 105:15,
 118:17, 129:13,
 131:23, 131:25,
 132:15, 132:19,
 133:5, 133:25,
 134:12, 142:4,
 142:11, 142:15,
 158:19, 160:1,
 160:7, 160:13,
 163:22, 166:2,
 166:20, 168:20,
 168:24, 169:2,
 170:8, 170:19,
 170:21, 170:24,
 171:1, 171:4,
 173:14, 174:1,
 174:4, 174:8,
 174:11, 174:21,
 175:1, 175:2, 175:4,
 175:9, 175:25,
 176:3, 176:5, 177:4,
 177:23, 178:2,
 178:8, 179:1, 179:4,
 179:12, 184:21,
 186:18, 187:6
MASD [2] - 71:10,
 80:24
MASD's [2] - 71:8,
 71:14
mass [3] - 58:18,
 131:1, 131:2
Master [1] - 93:23
match [1] - 151:8
matching [1] - 127:25
material [13] - 6:8,
 21:23, 26:15, 61:21,
 61:23, 78:3, 93:19,
 93:22, 93:25,
 101:10, 165:24,
 166:6
materials [87] - 6:7,
 6:10, 6:11, 7:11,
 15:25, 39:5, 39:9,
 39:13, 39:14, 39:15,

39:17, 39:18, 39:23,
 40:6, 40:11, 41:8,
 41:24, 42:1, 42:4,
 42:5, 42:21, 43:3,
 43:10, 43:22, 44:6,
 44:11, 45:6, 45:14,
 45:18, 45:19, 46:4,
 46:5, 46:10, 46:11,
 46:15, 46:18, 46:19,
 47:5, 47:6, 48:22,
 49:15, 49:25, 50:12,
 50:14, 51:12, 51:14,
 55:18, 55:20, 55:22,
 55:23, 55:25, 56:7,
 57:5, 57:17, 61:4,
 76:12, 77:20, 77:21,
 77:23, 77:24, 78:6,
 78:7, 78:13, 78:14,
 80:8, 81:3, 92:15,
 92:18, 92:19,
 130:12, 130:14,
 158:19, 162:2,
 163:8, 163:21,
 165:9, 166:13,
 166:15, 177:23,
 178:2, 178:7, 179:11
math [16] - 106:9,
 107:1, 108:11,
 108:24, 109:18,
 110:11, 110:14,
 110:15, 110:17,
 151:10, 155:21,
 160:6, 173:24, 174:1
matter [15] - 9:15,
 51:10, 56:17, 74:16,
 91:17, 116:7, 116:9,
 131:13, 147:7,
 180:23, 183:1,
 185:22, 185:23,
 186:1, 192:24
maximum [2] - 53:8,
 55:15
Mayan [1] - 94:12
MBA [2] - 106:11,
 117:3
mean [28] - 8:5, 8:8,
 8:10, 13:1, 16:7,
 17:22, 25:21, 32:15,
 43:23, 45:25, 50:1,
 50:2, 57:25, 63:22,
 72:20, 92:9, 98:6,
 122:23, 125:13,
 126:8, 145:23,
 162:9, 169:4, 183:3,
 183:5, 188:7,
 188:21, 190:10
meaning [3] - 59:6,
 80:18, 161:24
meaningless [1] -
 104:11

means [8] - 10:8,
 32:16, 58:1, 98:5,
 125:17, 161:4,
 161:7, 183:3
meant [3] - 63:16,
 103:24, 188:22
meantime [1] - 33:4
measure [1] - 110:6
measured [2] - 129:7
measures [1] - 71:12
measuring [1] - 110:4
mechanism [1] -
 164:25
mediocre [1] - 149:23
meet [2] - 13:8, 179:16
melting [1] - 177:14
member [3] - 133:21,
 139:11, 149:8
members [9] - 54:25,
 108:6, 131:24,
 132:9, 133:4,
 133:12, 133:18,
 140:25, 142:18
memo [1] - 30:5
memories [5] - 20:12,
 37:8, 120:3, 142:21
memorized [1] -
 144:21
memory [6] - 20:11,
 70:23, 129:25,
 130:6, 136:1, 138:11
mental [1] - 143:24
mentally [1] - 56:19
mention [2] - 140:20,
 167:18
mentioned [10] -
 10:20, 12:16,
 107:22, 111:3,
 122:20, 149:13,
 152:10, 153:2,
 176:18, 178:17
mentions [1] - 122:17
menus [1] - 97:20
merely [2] - 14:11,
 25:16
merits [1] - 137:11
Merle [6] - 118:23,
 118:24, 118:25,
 119:1, 119:2
Mesa [3] - 127:16,
 127:21, 128:7
message [5] - 57:20,
 58:15, 61:11, 124:4,
 177:8
messy [1] - 139:9
met [1] - 5:16
method [1] - 157:25
methods [1] - 162:3
metric [1] - 150:13
metrics [2] - 150:9,

185:10
Mexican [49] - 11:8,
 11:16, 17:8, 24:6,
 24:7, 24:17, 24:23,
 38:16, 50:7, 52:3,
 52:10, 52:20, 53:15,
 65:5, 65:10, 67:22,
 71:5, 73:5, 74:7,
 75:20, 76:25, 93:4,
 97:19, 98:6, 98:16,
 98:18, 99:7, 102:11,
 119:16, 126:5,
 128:16, 128:25,
 129:13, 129:16,
 132:11, 133:16,
 135:14, 135:16,
 135:18, 140:20,
 146:11, 147:5,
 160:21, 161:10,
 167:7, 174:15,
 187:8, 189:16
Mexican-American
 [35] - 17:8, 38:16,
 50:7, 52:3, 52:10,
 52:20, 53:15, 65:5,
 65:10, 67:22, 71:5,
 73:5, 75:20, 76:25,
 93:4, 98:16, 98:18,
 99:7, 102:11,
 119:16, 128:16,
 128:25, 129:13,
 129:16, 132:11,
 133:16, 135:14,
 140:20, 146:11,
 147:5, 160:21,
 161:10, 167:7,
 174:15, 187:8
Mexican-Americans
 [6] - 17:8, 24:6, 24:7,
 135:16, 135:18,
 189:16
Mexico [1] - 96:4
Michael [1] - 62:17
mid [1] - 139:15
mid-afternoon [1] -
 139:15
middle [14] - 75:16,
 82:8, 106:14,
 133:14, 133:15,
 154:1, 154:3, 160:2,
 164:16, 173:3,
 173:4, 173:10,
 174:1, 174:10
might [17] - 21:2,
 25:24, 77:3, 77:10,
 112:12, 126:7,
 126:18, 129:25,
 133:7, 137:3,
 138:17, 139:18,
 161:7, 164:7, 164:9,

169:7, 169:9
miles ^[1] - 107:25
militant ^[1] - 58:25
million ^[4] - 66:7,
 85:17, 109:25,
 160:10
mind ^[5] - 7:5, 29:19,
 97:19, 125:19, 143:8
mindset ^[2] - 125:21,
 156:7
mine ^[1] - 108:15
mini ^[2] - 25:9, 26:4
minimal ^[5] - 66:18,
 161:11, 161:19,
 164:6, 172:9
minimum ^[2] - 91:2,
 179:16
minorities ^[3] - 56:14,
 164:23, 165:6
minority ^[11] - 108:3,
 113:5, 126:16,
 149:12, 149:19,
 149:20, 151:25,
 152:3, 156:1, 162:9,
 165:12
minus ^[1] - 106:23
minute ^[11] - 7:17,
 14:24, 31:18, 66:24,
 68:5, 112:6, 161:17,
 162:8, 175:23,
 182:8, 189:4
minutes ^[14] - 4:13,
 19:24, 59:18, 67:24,
 73:7, 188:13,
 188:15, 188:23,
 188:25, 189:1,
 189:3, 190:13,
 191:6, 191:17
misbehave ^[1] - 39:21
misplacing ^[1] - 90:24
missing ^[1] - 58:5
mission ^[5] - 71:13,
 86:25, 109:21,
 111:15, 162:19
misspoke ^[1] - 20:2
misstates ^[5] - 41:21,
 44:13, 51:24, 81:4,
 81:12
misuse ^[5] - 40:11,
 41:8, 41:14, 41:17,
 41:18
Mitchell ^[1] - 62:17
mix ^[1] - 170:11
mmm-hmm ^[13] -
 78:16, 88:23, 96:1,
 98:12, 114:15,
 122:22, 158:24,
 164:15, 172:4,
 173:8, 173:25,
 174:12, 175:7

modify ^[1] - 182:18
Mofford ^[2] - 148:16,
 148:20
moment ^[2] - 9:6,
 167:13
monies ^[1] - 141:15
monitor ^[2] - 157:18,
 181:4
monitoring ^[4] -
 90:23, 91:7, 91:12,
 92:5
month ^[4] - 38:23,
 57:4, 84:25
monthly ^[1] - 83:5
months ^[3] - 75:20,
 83:24, 102:25
Morado ^[1] - 130:4
moral ^[1] - 177:20
moreover ^[1] - 63:13
Morley ^[11] - 31:17,
 31:22, 142:23,
 143:6, 143:12,
 143:13, 143:21,
 144:4, 144:7, 144:8,
 144:12
morning ^[11] - 4:3,
 5:9, 5:10, 33:13,
 33:14, 98:5, 167:1,
 191:20, 192:6,
 192:22, 192:23
most ^[9] - 23:20,
 58:24, 63:8, 67:23,
 71:21, 73:6, 104:11,
 126:12, 150:14
mostly ^[5] - 29:23,
 43:6, 97:20, 121:25,
 132:1
motion ^[37] - 4:11,
 5:1, 5:3, 5:12, 5:14,
 6:1, 8:12, 8:16, 10:3,
 10:23, 15:7, 16:6,
 16:8, 16:13, 16:16,
 16:19, 17:16, 20:17,
 20:22, 21:4, 21:8,
 21:14, 21:19, 21:21,
 22:3, 22:4, 22:20,
 26:14, 26:17, 28:5,
 28:8, 28:22, 28:23,
 29:14, 171:9
motions ^[4] - 4:6,
 4:10, 4:14, 30:9
motivate ^[1] - 151:11
motivated ^[2] - 108:9,
 137:6
motivation ^[1] - 108:9
motives ^[4] - 11:2,
 11:20, 26:1, 26:5
motto ^[1] - 123:15
move ^[19] - 36:9,
 37:15, 55:7, 60:13,

90:1, 96:12, 107:9,
 107:12, 128:23,
 128:25, 129:4,
 132:7, 141:17,
 161:18, 165:3,
 166:18, 169:19,
 171:7, 183:7
moved ^[6] - 18:9,
 18:12, 87:22, 87:25,
 136:9, 136:19
movement ^[3] - 58:24,
 59:1, 94:9
movements ^[2] -
 58:18, 59:2
moves ^[1] - 107:11
moving ^[5] - 34:15,
 69:16, 109:20,
 129:13, 137:8
MR ^[162] - 4:16, 4:19,
 5:5, 5:8, 5:9, 5:11,
 5:22, 5:25, 6:12,
 6:18, 6:23, 7:1, 7:8,
 7:10, 7:14, 7:19,
 7:22, 7:25, 8:3, 8:5,
 8:8, 8:10, 8:14, 8:18,
 9:18, 9:21, 9:24,
 10:5, 10:10, 14:23,
 15:5, 15:8, 15:15,
 15:18, 15:22, 16:9,
 16:15, 16:18, 17:19,
 17:23, 18:9, 18:13,
 18:20, 18:25, 19:7,
 19:10, 21:2, 21:5,
 21:12, 21:17, 26:20,
 26:23, 27:2, 27:3,
 29:5, 29:10, 30:10,
 30:13, 30:15, 30:19,
 31:8, 31:11, 31:20,
 31:25, 32:18, 32:25,
 33:2, 33:6, 33:8,
 33:12, 34:11, 34:20,
 35:2, 35:5, 35:7,
 35:9, 35:16, 36:9,
 36:16, 36:22, 37:4,
 37:14, 38:3, 38:8,
 42:3, 43:8, 47:13,
 47:16, 47:18, 47:21,
 50:8, 51:7, 51:20,
 54:8, 54:10, 59:16,
 59:19, 59:24, 60:13,
 60:18, 60:21, 60:23,
 62:8, 67:1, 67:3,
 68:7, 68:10, 69:21,
 70:3, 70:8, 76:20,
 80:6, 80:13, 81:8,
 81:15, 82:18, 82:20,
 84:10, 84:11, 84:17,
 84:19, 84:21, 84:24,
 85:5, 85:8, 85:11,
 87:10, 87:14, 87:19,

87:21, 88:4, 88:9,
 89:1, 89:7, 89:10,
 89:13, 89:14, 90:1,
 90:14, 90:15, 96:13,
 97:1, 97:5, 97:9,
 97:12, 104:18,
 104:20, 105:17,
 105:23, 118:2,
 154:13, 171:7,
 190:8, 190:12,
 190:14, 190:24,
 191:1, 191:5, 191:9,
 191:21, 192:12,
 192:17
MS ^[110] - 10:15,
 11:14, 11:25, 12:5,
 12:10, 12:16, 13:3,
 13:7, 13:12, 13:14,
 13:20, 13:23, 14:1,
 14:4, 14:6, 15:1,
 19:23, 19:25, 20:10,
 28:6, 28:9, 30:14,
 32:6, 32:12, 36:11,
 37:2, 41:21, 43:12,
 44:13, 47:10, 49:18,
 50:16, 51:15, 51:24,
 60:15, 60:19, 62:5,
 63:18, 63:20, 66:3,
 68:19, 69:25, 70:11,
 76:15, 79:21, 80:10,
 81:4, 81:12, 84:8,
 84:15, 84:18, 85:7,
 85:9, 88:7, 89:4,
 90:5, 90:7, 90:11,
 96:8, 96:18, 96:20,
 104:16, 105:21,
 105:24, 106:2,
 117:22, 118:6,
 118:9, 139:16,
 139:20, 139:25,
 140:5, 140:7, 140:8,
 154:6, 154:12,
 154:14, 159:3,
 159:9, 171:10,
 171:12, 171:13,
 182:4, 182:7,
 182:14, 182:17,
 182:20, 182:22,
 182:25, 183:4,
 183:7, 183:8,
 183:16, 183:18,
 185:25, 186:3,
 186:6, 186:9,
 186:10, 188:12,
 188:20, 188:22,
 189:1, 189:5, 189:9,
 189:11, 190:6,
 192:4, 192:7, 192:13
mud ^[1] - 190:1
multitude ^[1] - 14:13
murderer ^[2] - 131:1,

131:2
music ^[1] - 93:12
must ^[1] - 41:17
muster ^[1] - 66:18

N

name ^[7] - 17:13,
 90:25, 114:15,
 126:23, 152:24,
 153:1, 155:6
named ^[4] - 78:8,
 112:18, 139:5,
 145:22
nation ^[10] - 105:9,
 110:2, 110:11,
 110:14, 110:16,
 110:18, 128:22,
 148:5, 155:14,
 156:20
national ^[5] - 66:7,
 92:8, 112:18, 127:2,
 145:23
National ^[3] - 62:10,
 110:5, 110:22
nationwide ^[2] -
 155:19, 156:16
Native ^[18] - 59:1,
 112:11, 112:13,
 112:14, 112:19,
 112:21, 112:25,
 113:3, 113:4, 113:8,
 113:9, 113:14,
 113:18, 114:9,
 114:10, 115:1, 126:7
nature ^[10] - 41:2,
 51:12, 58:11, 59:8,
 74:15, 119:7, 126:1,
 126:21, 145:8, 188:2
Navajo ^[1] - 113:3
nearly ^[1] - 149:15
necessarily ^[1] - 63:11
necessary ^[3] - 55:5,
 146:14, 147:11
need ^[17] - 13:10,
 13:12, 13:13, 18:1,
 32:2, 42:12, 60:12,
 80:1, 80:2, 80:4,
 111:16, 112:6,
 116:19, 123:12,
 128:23, 128:24,
 188:24
needed ^[8] - 44:21,
 44:22, 44:25, 51:21,
 86:3, 145:5, 177:3
needs ^[3] - 90:2,
 108:9, 144:23
negative ^[5] - 123:11,
 123:17, 156:2,
 179:25

neighborhood [5] - 117:7, 117:11, 117:13, 117:15, 128:14	171:2	152:18, 179:23	172:6, 172:11, 172:25, 173:17, 176:9	official [8] - 6:19, 7:2, 15:17, 24:2, 24:18, 89:8, 165:20, 178:16
never [17] - 7:5, 11:24, 18:9, 19:2, 19:4, 19:5, 19:8, 47:24, 53:23, 57:19, 58:15, 63:14, 87:2, 124:21, 152:21, 156:14	none [2] - 14:9, 25:10	NY [2] - 2:5, 2:12	observed [22] - 33:25, 35:23, 39:22, 45:11, 46:11, 67:23, 69:4, 73:6, 73:21, 73:22, 74:8, 77:1, 77:24, 78:3, 155:2, 163:24, 169:25, 172:1, 172:23, 174:10, 176:13, 177:18	Official [3] - 1:8, 1:20, 193:4
nevertheless [1] - 95:2	noon [2] - 87:9, 103:18	<hr/> O <hr/>	observers [1] - 161:25	officio [1] - 139:11
New [3] - 2:5, 2:12, 148:19	notch [2] - 50:19, 65:16	o'clock [4] - 191:10, 191:11, 191:22, 192:23	observing [10] - 40:16, 73:18, 92:5, 92:11, 92:14, 134:9, 162:21, 170:24, 171:4, 177:14	omitted [4] - 58:7, 58:14, 61:21, 61:23
new [3] - 6:3, 10:25, 58:25	note [6] - 38:12, 38:17, 39:4, 47:3, 80:21	oath [1] - 75:6	obtain [1] - 173:11	on-site [3] - 34:6, 67:21, 72:1
news [1] - 175:9	noted [7] - 5:11, 48:7, 72:12, 72:24, 80:25, 81:2, 84:4	object [3] - 5:19, 36:11, 90:5	obtained [2] - 75:23, 76:5	once [8] - 36:8, 50:18, 67:24, 73:6, 77:2, 163:13, 168:11, 171:17
newspapers [2] - 95:21, 112:14	nothing [12] - 11:18, 12:3, 12:20, 12:24, 25:17, 40:18, 71:17, 101:2, 103:9, 111:25, 130:23, 166:10	objected [6] - 4:21, 20:24, 62:3, 87:25, 89:2, 89:3	obvious [4] - 66:15, 120:15, 179:13, 185:1	one [106] - 4:9, 7:9, 9:3, 11:15, 11:17, 12:6, 13:16, 14:7, 15:17, 16:18, 22:4, 23:8, 23:24, 25:18, 26:20, 27:1, 29:16, 30:24, 34:11, 36:20, 38:23, 56:11, 57:3, 57:14, 58:13, 59:11, 61:10, 64:8, 65:1, 65:4, 66:6, 69:18, 70:19, 71:10, 74:9, 74:18, 80:16, 89:16, 90:22, 91:21, 93:17, 93:23, 95:18, 97:13, 97:16, 97:18, 98:13, 98:23, 100:22, 102:16, 104:11, 105:8, 108:1, 108:22, 110:14, 111:13, 111:19, 112:13, 112:17, 117:17, 118:13, 120:25, 123:21, 123:24, 124:7, 124:11, 124:21, 125:1, 125:2, 126:11, 126:12, 127:1, 127:4, 128:8, 128:19, 128:22, 129:2, 129:15, 134:16, 142:2, 145:15, 147:18, 151:2, 151:6, 154:19, 156:7, 156:18, 156:19, 157:7, 160:11, 161:9, 161:14, 163:6, 163:20, 164:12, 172:8, 173:5, 174:10, 174:24, 185:1
Next [1] - 61:5	Notice [1] - 89:22	objection [44] - 4:17, 4:18, 4:19, 36:14, 37:2, 41:21, 41:22, 43:12, 44:13, 47:10, 47:15, 49:18, 50:16, 51:15, 51:24, 60:9, 60:15, 60:16, 62:5, 63:18, 66:3, 68:19, 69:25, 70:11, 76:15, 76:16, 79:21, 79:23, 80:10, 81:4, 81:12, 84:8, 88:5, 90:4, 90:11, 104:16, 104:19, 118:1, 118:3, 118:7, 154:7, 154:13, 171:7, 182:11	obviously [9] - 4:7, 31:22, 41:18, 75:5, 120:14, 123:22, 123:24, 124:8, 166:13	one-one [1] - 160:11
next [33] - 1:4, 32:17, 33:15, 46:21, 46:22, 52:18, 57:14, 63:14, 64:20, 64:24, 70:24, 73:3, 82:23, 84:25, 95:24, 96:2, 97:16, 97:17, 97:22, 98:13, 98:23, 99:4, 100:22, 105:1, 125:2, 137:11, 166:18, 175:8, 190:13, 190:25	notice [31] - 4:12, 4:17, 4:21, 8:10, 8:15, 15:25, 16:3, 16:4, 16:17, 16:20, 16:23, 21:19, 21:25, 23:4, 26:14, 28:15, 28:16, 28:19, 28:23, 28:24, 29:18, 78:12, 90:20, 91:14, 91:15, 91:23, 91:24, 92:2, 93:1, 93:3, 102:15	objection's [6] - 43:13, 44:14, 51:25, 80:12, 81:5, 90:12	occasions [1] - 126:18	one-third [1] - 108:22
nice [1] - 188:13	noticeable [1] - 7:15	objectionable [4] - 40:18, 44:12, 45:6, 45:20	occupied [1] - 99:5	ones [2] - 5:20, 6:21
night [3] - 96:9, 96:21, 192:11	notwithstanding [1] - 50:9	objections [2] - 9:11, 89:4	occurred [2] - 71:13, 180:21	online [1] - 29:6
nine [3] - 163:24, 164:14, 165:16	NPR [4] - 62:10, 62:14, 62:19, 62:25	objective [4] - 71:10, 86:8, 107:9, 107:11	occurrence [1] - 113:2	
Ninth [3] - 15:12, 16:4	Number [5] - 38:6, 60:3, 61:2, 61:3, 148:5	objectives [1] - 155:16	occurring [1] - 174:11	
no-brainer [2] - 112:22, 113:11	number [41] - 10:25, 23:19, 44:15, 45:19, 45:22, 46:3, 56:9, 60:2, 60:4, 60:17, 60:19, 60:21, 60:22, 72:17, 73:23, 77:13, 95:7, 110:13, 111:19, 113:24, 118:4, 123:1, 128:22, 145:22, 150:6, 155:6, 156:19, 160:15, 164:6, 167:22, 170:25, 171:1, 171:2, 172:13, 172:14, 174:14, 188:1, 188:10	obligated [1] - 20:18	October [2] - 98:13, 98:20	
no-lose [1] - 104:21	numbers [5] - 58:20, 60:2, 74:14, 159:7, 164:4	obligation [2] - 20:25, 22:14	OF [3] - 1:2, 3:1, 3:7	
NOAH [1] - 1:3	numerous [5] - 89:4, 92:9, 126:18,	observable [5] - 163:15, 163:17, 163:18, 170:13	off-activity [1] - 73:24	
nobody [2] - 31:23, 123:4		observation [10] - 39:20, 40:4, 40:16, 44:18, 77:12, 85:16, 101:2, 123:3, 162:24, 176:11	off-curriculum [1] - 73:24	
non [11] - 43:25, 50:20, 79:19, 90:20, 90:21, 91:16, 92:10, 93:3, 141:5, 141:9, 171:2		observations [8] - 39:10, 39:16, 46:13, 46:14, 73:16, 76:1, 166:11, 173:3	offensive [1] - 101:22	
Non [1] - 89:22		observe [10] - 40:14, 41:8, 115:18, 170:19, 170:21,	offer [3] - 21:5, 60:10, 151:19	
Non-Compliance [1] - 89:22			offered [3] - 45:2, 138:2, 159:18	
non-compliance [6] - 90:20, 90:21, 91:16, 93:3, 141:5, 141:9			offhand [1] - 125:8	
non-credible [1] - 79:19			office [17] - 75:12, 78:20, 88:12, 88:16, 88:22, 89:16, 98:2, 98:4, 104:7, 141:17, 141:20, 142:10, 142:20, 143:7, 145:10, 146:9, 180:13	
non-partisan [3] - 43:25, 50:20, 92:10			Office [2] - 2:7, 2:19	
non-teaching [1] -			officers [1] - 183:22	

- onus** [1] - 149:13
open [2] - 27:6, 44:23
opening [2] - 113:6, 182:11
operate [2] - 25:23, 133:12
operating [1] - 128:1
opponent [2] - 138:18, 191:24
opportunity [3] - 22:7, 56:17, 141:11
oppose [1] - 58:22
opposed [3] - 94:16, 132:15, 156:16
opposing [2] - 12:13, 14:2
opposition [2] - 5:1, 132:19
oppressed [9] - 64:2, 64:6, 64:9, 101:24, 101:25, 123:1, 124:22, 125:3, 125:16
Oppressed [1] - 99:5
oppressed/
oppressor [6] - 100:13, 104:2, 122:14, 122:15, 122:21, 179:23
oppressing [1] - 94:24
oppression [6] - 124:16, 125:6, 125:12, 140:22, 140:25, 165:12
oppressor [5] - 64:3, 101:24, 101:25, 123:3, 125:18
oppressors [2] - 64:6, 102:16
options [1] - 184:23
oral [1] - 22:25
order [44] - 4:4, 4:11, 4:24, 5:3, 5:13, 5:19, 7:18, 7:21, 7:24, 8:13, 8:17, 12:3, 12:23, 12:25, 15:7, 16:8, 16:14, 16:19, 18:7, 18:10, 19:19, 21:22, 22:4, 22:20, 26:18, 32:22, 52:24, 53:2, 72:8, 82:21, 82:23, 83:1, 83:10, 83:13, 83:21, 83:22, 83:23, 84:12, 85:1, 108:10, 182:9, 184:21, 184:24, 186:11
ordered [5] - 52:19, 53:11, 83:2, 83:10, 83:23
orderly [1] - 9:8
orders [2] - 21:11, 186:5
organization [5] - 91:4, 92:12, 161:23, 166:15, 177:15
organizational [2] - 147:21, 172:14
organizations [1] - 185:16
organize [3] - 188:13, 188:15, 188:23
organized [17] - 57:22, 156:25, 161:17, 162:7, 162:18, 162:21, 162:22, 164:19, 164:24, 164:25, 165:4, 172:17, 172:19, 175:14, 175:18, 175:21, 177:8
orgasm [1] - 100:23
orientation [1] - 149:3
originally [2] - 138:4, 154:20
Ortega [2] - 111:5, 111:11
ostensibly [1] - 184:17
otherwise [3] - 10:3, 11:23, 83:5
ought [3] - 113:12, 131:17, 156:23
out-of-state [1] - 181:3
outcome [3] - 72:21, 86:14, 172:19
Outcomes [1] - 167:6
outrageous [2] - 12:14, 12:23
outside [7] - 39:23, 75:23, 76:5, 76:12, 77:21, 77:23, 78:3
outstanding [4] - 5:12, 17:16, 112:17, 114:1
outweigh [2] - 25:5, 26:12
overabundance [1] - 165:17
overall [1] - 107:14
overcome [1] - 133:9
overruled [19] - 41:22, 43:13, 44:14, 47:15, 49:20, 50:17, 51:16, 51:25, 63:19, 63:21, 66:4, 70:12, 76:16, 79:23, 80:12, 81:5, 81:14, 90:12, 104:19
overseeing [2] - 73:11, 179:21
oversight [3] - 90:23, 162:24, 178:18
overthrow [1] - 93:7
overwhelmingly [1] - 122:6
own [17] - 17:11, 32:8, 42:24, 42:25, 54:20, 67:7, 99:17, 123:7, 125:22, 126:3, 132:23, 133:15, 134:8, 144:6, 167:8, 190:3, 191:25
-
- P**
-
- p.m** [8] - 10:24, 87:12, 87:15, 139:22, 189:7, 192:24
P.O [1] - 2:8
page [37] - 26:21, 35:13, 38:5, 38:6, 39:2, 46:21, 46:22, 48:13, 52:18, 55:24, 57:15, 60:2, 60:4, 61:3, 61:21, 63:1, 63:3, 64:20, 65:3, 67:13, 70:24, 75:10, 75:16, 80:21, 82:23, 94:4, 120:21, 152:2, 153:12, 159:14, 159:16, 160:19, 161:9, 178:24, 186:23, 186:25
PAGE [1] - 3:3
Page [21] - 3:9, 56:11, 60:3, 61:11, 63:2, 64:20, 93:2, 93:18, 93:20, 119:23, 125:10, 160:1, 163:16, 163:25, 166:5, 166:6, 167:5, 170:12, 171:23, 174:23
pages [8] - 56:7, 61:7, 62:3, 62:4, 144:20, 166:4, 166:17, 193:7
Pages [3] - 6:9, 61:13, 74:25
paid [1] - 99:16
paint [1] - 100:1
panel [2] - 15:12, 66:7
paper [1] - 66:9
papers [6] - 4:15, 28:11, 42:24, 48:21, 49:15, 56:10
paradoxical [2] - 39:20, 40:5
paragraph [23] - 38:12, 39:4, 47:4, 48:13, 61:6, 63:5, 63:14, 63:23, 63:24, 64:21, 64:22, 64:24, 67:14, 73:4, 75:16, 79:3, 79:5, 80:21, 83:1, 91:15, 160:25
paragraphs [1] - 151:18
pardon [1] - 12:10
parents [4] - 124:1, 124:2, 124:3, 150:10
Paris [1] - 58:19
part [28] - 5:15, 6:1, 16:18, 26:17, 29:13, 37:20, 37:25, 49:5, 58:18, 69:13, 73:18, 80:2, 92:5, 92:21, 123:8, 130:21, 137:5, 148:11, 156:20, 157:6, 162:23, 163:1, 165:9, 167:10, 169:25, 176:6, 189:18, 189:21
partially [1] - 14:18
participate [7] - 69:7, 101:4, 160:14, 160:16, 160:22, 171:1, 179:2
participated [1] - 131:15
particular [7] - 47:8, 94:20, 115:17, 118:18, 135:21, 162:2, 167:10
particularly [3] - 94:21, 95:8, 156:1
parties [3] - 5:16, 22:23, 97:6
partisan [10] - 43:25, 48:22, 49:15, 50:20, 51:12, 51:14, 80:23, 92:10, 148:25, 190:3
partner [1] - 21:14
parts [4] - 5:14, 63:7, 126:12, 159:2
party [2] - 22:9, 158:6
pass [1] - 66:17
passage [4] - 20:12, 57:7, 57:10, 59:4
passed [3] - 14:13, 14:17, 148:9
passing [1] - 106:9
past [2] - 19:25, 136:24
patience [2] - 55:18, 87:11
Paulo [18] - 26:24, 27:6, 27:7, 27:11, 27:24, 29:7, 30:1, 34:6, 34:8, 35:25, 36:6, 36:7, 36:24, 36:25, 57:3, 64:1, 152:24, 153:4
pedagogy [3] - 36:24, 36:25, 99:5
Pedicone [8] - 126:22, 127:3, 145:11, 145:14, 145:17, 145:19, 153:13, 187:1
penalties [1] - 141:9
penalty [1] - 55:15
pendency [1] - 98:20
pending [8] - 4:6, 4:10, 4:25, 9:19, 22:19, 30:8, 42:10, 68:6
pennies [1] - 157:1
Pennsylvania [2] - 99:14, 99:16
people [51] - 24:25, 25:1, 25:22, 27:18, 29:24, 39:7, 39:21, 40:2, 40:7, 40:8, 40:15, 41:7, 42:19, 43:24, 44:19, 50:23, 51:3, 54:24, 63:11, 78:19, 91:7, 92:10, 100:2, 102:6, 103:15, 107:3, 108:1, 115:20, 116:19, 117:14, 119:22, 123:1, 123:5, 123:8, 124:4, 129:19, 131:16, 132:4, 132:13, 133:14, 133:15, 135:12, 165:8, 176:10, 184:15, 185:8, 187:23, 191:24, 192:14
per [5] - 43:3, 92:19, 92:20, 127:25, 128:1
percent [54] - 41:13, 52:22, 53:3, 53:9, 53:11, 53:14, 53:25, 54:12, 55:12, 55:14, 55:15, 62:15, 66:9, 67:22, 73:4, 73:5, 73:8, 73:18, 73:21, 74:7, 74:20, 76:25, 77:7, 77:10, 77:12, 77:13, 83:4, 83:14, 83:21, 83:23, 84:6, 105:8, 106:22, 106:23, 107:14, 109:1, 109:5, 126:25, 127:1, 141:10, 149:14

149:15, 159:23,
160:3, 160:7,
165:16, 165:23,
169:5, 169:9,
169:14, 169:21

percentage [5] -
74:21, 150:10,
150:12, 159:22,
160:9

perception [1] - 81:23

perceptions [1] - 43:4

perfect [1] - 120:12

perfectly [2] - 123:14,
191:2

perform [3] - 162:9,
163:21, 166:19

performance [5] -
65:9, 148:10,
150:15, 156:14,
157:2

performed [3] -
166:23, 167:8,
167:13

perhaps [1] - 20:11

period [12] - 53:22,
55:3, 101:13,
101:17, 119:5,
130:9, 145:13,
153:15, 155:20,
156:19, 161:18,
162:8

permanent [1] -
104:22

permission [2] - 5:6,
27:9

permit [2] - 24:20,
68:21

permitted [2] - 113:19,
180:5

persist [1] - 21:22

person [4] - 17:12,
78:17, 80:16, 80:17

personal [8] - 17:7,
111:13, 111:17,
111:22, 112:1,
112:5, 125:23,
165:18

personalities [1] -
127:1

personally [3] - 55:20,
105:7, 109:13

personnel [1] - 69:19

perspective [4] - 66:5,
120:22, 121:6,
174:16

Perspective [2] - 93:5,
93:21

persuading [1] -
100:20

pertaining [2] - 21:23,
23:4

pertains [1] - 10:23

Peterson [1] - 2:14

pharmacist [2] -
111:8, 126:9

pharmacists [1] -
112:3

phase [1] - 181:22

phenomenon [1] -
39:25

philosophy [2] -
187:15, 187:19

Phoenix [8] - 2:20,
2:23, 106:13,
107:17, 108:19,
109:7, 127:16, 128:7

phrase [4] - 53:5,
54:16, 122:20,
150:18

physically [1] - 103:3

pick [4] - 11:6, 32:10,
37:13, 44:20

picture [2] - 100:2,
100:17

pictures [1] - 57:16

piece [8] - 12:6, 15:9,
58:4, 58:6, 115:15,
115:20, 116:9

pieces [6] - 11:6,
15:23, 16:2, 16:4,
20:2, 114:20

pile [2] - 57:2, 57:6

Pistor [1] - 173:9

Pitti [2] - 12:16, 31:15

Pitti's [2] - 10:6, 10:7

place [27] - 12:22,
50:1, 67:21, 72:2,
72:5, 72:7, 72:13,
72:25, 73:25, 81:23,
97:2, 115:6, 124:24,
125:1, 127:18,
130:22, 142:22,
143:11, 143:16,
145:12, 145:15,
150:13, 155:13,
158:25, 169:19,
177:24, 180:18

placed [4] - 34:1,
110:13, 110:17,
110:19

places [1] - 152:18

plains [1] - 87:3

plaintiff [1] - 31:3

Plaintiffs [2] - 1:5, 2:2

plaintiffs [28] - 5:12,
6:2, 8:23, 9:13,
10:15, 10:21, 11:6,
13:16, 14:11, 15:7,
16:22, 16:24, 20:14,
22:6, 22:12, 23:7,
24:16, 24:22, 27:22,
30:24, 31:12, 32:22,
34:15, 153:2, 159:5,
160:25, 166:10,
166:25

Plaintiffs' [17] - 6:13,
6:18, 35:18, 38:2,
62:9, 67:4, 70:24,
75:10, 85:5, 85:7,
88:2, 88:25, 89:15,
140:13, 151:15,
159:4, 183:23

plaintiffs' [6] - 4:11,
5:3, 22:14, 59:22,
117:22, 129:10

plan [6] - 53:21, 69:4,
72:11, 72:23, 77:25,
162:6

planning [3] - 173:19,
173:21

plans [8] - 52:7, 69:10,
85:24, 86:15, 91:3,
161:16, 162:5, 177:9

play [3] - 54:15, 155:8,
189:18

played [1] - 59:25

players [2] - 51:4, 51:5

playing [3] - 54:9,
75:2, 85:10

pleasant [1] - 95:8

plug [1] - 32:4

plus [4] - 4:24, 106:23,
145:4, 153:22

pocket [1] - 99:17

point [22] - 13:1,
20:15, 28:21, 29:1,
36:14, 48:2, 51:8,
90:2, 103:2, 119:24,
125:2, 130:1,
134:16, 142:7,
146:10, 158:18,
160:2, 178:1,
184:11, 184:13,
184:25

Point [1] - 48:15

pointed [2] - 10:19,
142:7

points [3] - 107:11,
107:12, 107:13

poisoned [1] - 100:4

poisoning [1] - 98:8

poisonous [1] - 102:1

police [2] - 29:21,
29:23

policy [13] - 42:20,
44:19, 50:24, 78:19,
86:19, 102:23,
103:5, 114:25,
115:2, 116:21,
142:24, 144:8,
146:15

policymakers [1] -
64:7

political [6] - 23:21,
24:10, 137:4, 149:3,
165:18, 190:3

politics [4] - 23:21,
23:22, 136:23, 137:9

poor [4] - 117:7,
150:12, 152:3,
162:17

poorly [2] - 92:24,
116:10

population [3] - 111:2,
149:13, 159:18

populations [1] -
113:6

portion [11] - 23:3,
44:5, 44:17, 45:6,
45:8, 45:14, 45:18,
47:10, 58:13, 141:4,
166:7

position [7] - 10:13,
23:13, 25:20,
116:19, 139:6,
145:2, 154:20

positive [9] - 65:9,
66:1, 120:6, 120:11,
121:10, 122:19,
166:11, 168:16,
168:24

positively [1] - 151:22

possibilities [1] -
20:16

possibility [1] - 32:7

possible [7] - 24:9,
25:24, 113:7,
113:20, 114:17,
187:20, 188:5

possibly [3] - 25:11,
31:24, 134:19

post [6] - 16:20,
21:23, 22:6, 26:16,
95:19, 170:6

posted [10] - 27:14,
95:7, 95:17, 95:22,
95:23, 95:25, 96:2,
96:6, 97:18, 102:4

poster [11] - 33:25,
34:1, 34:3, 64:21,
64:22, 130:15,
130:18, 131:1,
131:3, 131:8, 131:19

posting [2] - 19:15,
102:7

posts [28] - 16:23,
16:25, 17:4, 17:7,
17:9, 17:10, 17:14,
17:21, 17:24, 18:19,
18:21, 18:22, 19:12,
19:14, 19:17, 19:18,
20:13, 22:8, 22:12,
22:15, 27:17, 96:13,
96:15, 96:17, 96:22,
96:25, 97:7

potential [2] - 143:13,
156:2

potentially [5] - 29:13,
55:21, 105:15,
124:2, 125:20

pothole [3] - 146:16,
146:17, 146:18

poverty [4] - 108:3,
149:20, 156:1,
162:10

power [5] - 58:24,
98:17, 138:5,
146:23, 156:13

Power [1] - 93:6

powered [1] - 155:3

powerful [2] - 113:17,
147:23

powers [2] - 48:17,
48:19

practicing [3] - 111:8,
112:3, 126:9

pre [1] - 170:6

precisely [1] - 7:14

prediction [1] - 139:21

predictor [2] - 111:19,
111:20

predominantly [1] -
187:22

prefer [1] - 134:8

prejudice [18] - 8:23,
8:24, 9:2, 9:3, 9:4,
9:5, 10:11, 10:22,
12:6, 12:8, 12:11,
12:14, 13:19, 13:20,
13:25, 14:1, 14:3

prejudiced [1] - 20:8

prejudicial [2] - 13:1,
13:6

premise [4] - 11:11,
11:12, 11:15, 11:17

prepare [5] - 5:18,
12:12, 13:8, 13:11,
20:9

prepared [5] - 1:18,
1:23, 103:1, 139:3,
193:10

present [4] - 60:12,
83:7, 170:14, 174:5

presented [4] - 93:22,
117:24, 119:12,
120:12

presenting [1] - 83:18

presently [1] - 108:16

presided [1] - 135:5

President [1] - 119:18

president [8] - 99:14,
113:3, 113:15,
119:15, 119:25,
120:1, 129:20,
133:22
press [10] - 19:16,
52:3, 75:11, 102:20,
129:9, 129:11,
151:14, 151:21,
183:19
Press [1] - 85:1
pressed [1] - 120:13
presume [3] - 55:16,
70:13, 76:11
presuming [1] - 70:21
pretrial [20] - 4:11,
5:3, 5:12, 7:18, 7:21,
7:24, 8:13, 8:17,
12:3, 12:23, 12:25,
15:7, 16:8, 16:14,
16:19, 19:19, 21:21,
22:4, 22:20, 26:18
pretty [10] - 30:25,
31:4, 94:25, 100:18,
128:21, 131:6,
138:20, 146:7,
149:1, 153:5
prevent [3] - 8:20,
140:22, 140:24
preview [1] - 30:22
previous [4] - 57:15,
63:3, 68:9, 77:5
Previous [1] - 47:20
previously [3] - 5:17,
84:4, 155:1
primarily [5] - 39:18,
43:23, 44:9, 47:7,
187:22
primary [1] - 138:18
Principal [1] - 92:8
principal [4] - 92:10,
130:4, 157:13, 162:1
printout [1] - 35:10
problem [25] - 13:21,
24:25, 25:2, 27:22,
45:9, 66:11, 77:11,
92:18, 99:7, 99:8,
99:21, 99:22,
114:24, 115:2,
115:17, 115:21,
132:21, 133:17,
140:2, 143:13,
143:25, 144:2,
146:10, 147:1, 147:4
problems [15] -
108:11, 114:21,
114:23, 115:8,
115:23, 132:3,
132:4, 132:5, 132:6,
132:23, 141:12,

141:13, 143:2,
143:12, 175:11
Procedures [1] -
180:16
procedures [1] -
187:15
proceed [3] - 87:20,
91:13, 189:8
proceeded [1] - 92:6
proceeding [1] - 33:15
Proceedings [4] -
1:15, 1:18, 1:23,
192:24
proceedings [5] - 4:2,
7:16, 98:21, 183:14,
193:8
process [12] - 13:9,
23:6, 23:19, 49:8,
52:5, 81:10, 116:3,
137:3, 158:10,
175:6, 181:4, 183:15
processing [1] - 148:6
produce [7] - 18:1,
19:6, 19:9, 20:18,
25:5, 128:6, 147:10
produced [4] - 18:3,
127:8, 146:1, 159:5
product [1] - 147:10
production [1] - 17:1
professional [5] -
44:10, 91:7, 91:9,
92:7, 144:11
proffered [1] - 12:14
profit [1] - 58:22
profit-driven [1] -
58:22
program [61] - 17:10,
37:17, 38:10, 46:20,
47:7, 47:25, 49:2,
49:6, 50:13, 51:23,
52:16, 52:21, 53:12,
53:23, 53:24, 54:3,
54:18, 63:7, 65:8,
65:25, 67:10, 67:23,
71:5, 74:8, 75:13,
75:21, 81:10, 81:13,
82:7, 83:15, 84:13,
90:7, 90:17, 95:14,
108:24, 109:14,
112:20, 112:25,
131:23, 131:25,
132:11, 132:16,
132:19, 133:5,
134:1, 134:3, 134:5,
135:14, 141:7,
142:4, 142:11,
142:15, 152:20,
158:11, 158:20,
160:1, 160:17,
162:14, 166:2,

175:9, 184:21
programs [6] - 48:9,
71:11, 152:11,
152:14, 152:16
progress [2] - 126:16,
151:12
Progress [2] - 110:6,
110:23
prohibited [1] - 51:14
prohibits [1] - 93:7
project [2] - 42:18,
151:6
prolific [1] - 20:1
promoted [1] - 93:25
promotes [1] - 93:24
promoting [2] - 39:6,
166:20
pronounce [2] -
126:23, 126:24
proper [1] - 40:2
properly [4] - 13:8,
18:4, 18:5, 56:22
proposal [3] - 70:10,
70:14, 70:16
proposed [6] - 8:25,
15:15, 25:20, 115:2,
115:13, 137:18
Proposition [1] -
15:11
proselytizing [1] -
50:5
prospects [1] - 146:7
protection [3] - 14:19,
14:21, 15:12
protective [2] - 18:7,
18:9
proud [3] - 44:24,
59:3, 86:1
proudest [1] - 112:13
provide [3] - 60:7,
154:9, 179:4
provided [7] - 53:1,
76:12, 78:7, 78:14,
81:10, 96:9, 96:21
providing [2] - 78:12,
79:19
provision [3] - 23:15,
23:17, 46:25
pseudonym [1] -
17:12
pseudonyms [1] -
19:15
psychological [1] -
56:15
Public [4] - 1:7, 38:14,
62:11, 89:21
public [51] - 26:7,
27:15, 27:17, 28:12,
29:17, 29:21, 33:19,
34:9, 37:10, 42:19,

43:25, 44:19, 44:23,
44:24, 45:11, 49:12,
49:13, 50:19, 50:24,
53:21, 54:24, 54:25,
79:25, 102:23,
103:4, 106:8,
109:24, 109:25,
113:10, 113:20,
113:21, 114:18,
116:21, 116:22,
137:14, 139:12,
141:6, 141:14,
142:20, 145:9,
146:15, 149:7,
149:24, 151:2,
152:22, 157:5,
158:15, 183:22,
184:3
publication [1] - 50:2
publications [2] -
48:21, 49:14
publicly [3] - 7:12,
17:25, 18:3
published [3] - 72:21,
170:7, 170:11
publisher [1] - 100:7
publishes [1] - 28:4
publishing [1] - 72:20
Pueblo [1] - 60:8
Puerto [1] - 59:1
pull [3] - 112:23,
168:4, 168:13
pulled [1] - 36:1
pupils [1] - 47:8
purchased [1] -
158:19
purpose [11] - 11:1,
71:1, 71:2, 71:20,
89:9, 114:6, 114:13,
114:16, 138:14,
158:5, 182:12
Purpose [1] - 71:1
purposes [3] - 12:23,
71:3, 154:12
pursuant [4] - 38:13,
83:2, 91:16, 180:19
push [1] - 32:16
put [17] - 50:1, 56:23,
60:16, 95:2, 98:25,
99:19, 116:9,
140:12, 153:10,
155:13, 160:25,
166:25, 179:24,
184:16, 185:8,
185:21
putting [5] - 87:25,
131:3, 143:15,
190:23
PX-155 [1] - 118:6

Q

qualified [1] - 193:4
qualify [1] - 104:11
quality [5] - 91:3,
127:16, 148:6,
179:15, 184:3
quantitative [1] -
167:25
quash [2] - 17:16,
17:18
questionable [3] -
80:23, 166:5, 166:6
questioned [2] -
23:14, 154:22
questioning [3] - 89:5,
182:6, 182:10
questions [12] - 33:16,
33:18, 41:5, 50:9,
60:25, 73:10, 74:25,
90:3, 120:6, 151:14,
189:9, 189:12
quibble [2] - 45:25,
46:2
quickly [3] - 93:11,
93:13, 93:14
Quinn [2] - 2:11,
191:19
QUINN [8] - 2:11,
26:20, 26:23, 27:3,
191:1, 191:5,
191:21, 192:17
quite [13] - 18:19,
30:17, 31:22, 95:9,
112:23, 124:2,
130:3, 137:12,
145:22, 164:4,
171:16, 188:6, 189:1
quotation [1] - 61:24
quote [13] - 56:13,
56:20, 57:1, 57:16,
57:18, 59:9, 61:10,
95:19, 123:3,
123:21, 124:24,
160:24, 163:13
quotes [2] - 100:16,
121:8

R

race [9] - 39:7, 47:8,
56:18, 56:25, 57:7,
87:4, 87:6, 98:6,
184:2
Race [4] - 56:12,
56:21, 57:11, 98:5
racemize [2] - 64:1,
101:21
racial [10] - 24:5, 24:9,
24:14, 25:4, 25:24,

64:4, 64:5, 94:24,
122:19, 179:24
racism [3] - 56:15,
57:23, 189:18
racist [4] - 11:2,
100:11, 100:12,
100:13
racists [1] - 98:8
radar [1] - 114:22
radical [1] - 58:21
radicalization [1] -
162:20
radicalize [1] - 162:19
Radio [1] - 62:11
radio [1] - 95:19
Rage [1] - 93:5
rage [2] - 93:10, 93:14
raging [1] - 54:24
raised [4] - 11:21,
20:10, 20:14, 120:25
raising [1] - 157:4
rampant [1] - 66:13
ran [1] - 33:19
random [1] - 40:25
ranked [1] - 148:5
rankings [1] - 110:20
rate [8] - 106:21,
150:10, 150:12,
169:6, 169:7, 169:8,
169:9, 169:21
rates [5] - 65:17,
65:23, 169:5,
169:16, 170:2
rather [1] - 35:13
Raza [4] - 57:19,
58:15, 96:4, 98:5
RDR [2] - 1:19, 193:16
re [1] - 21:7
Re [1] - 167:6
Re-Analysis [1] -
167:6
reach [3] - 44:20,
157:21, 181:24
reached [3] - 59:2,
91:17, 186:17
read [30] - 36:8, 47:18,
47:20, 57:2, 57:25,
59:7, 65:8, 66:5,
66:19, 74:13, 80:1,
80:2, 82:10, 89:24,
92:2, 100:25,
105:22, 130:1,
158:19, 159:6,
166:2, 166:7, 166:8,
171:14, 171:17,
171:22, 172:10,
176:4, 181:7, 183:2
reading [26] - 39:21,
42:25, 44:7, 56:23,
57:4, 57:6, 66:7,
66:8, 66:20, 80:24,
96:8, 96:23, 104:10,
110:11, 110:20,
110:21, 123:22,
146:13, 154:23,
155:6, 155:22,
162:12, 165:5,
176:14, 181:14
ready [8] - 30:11, 33:7,
52:5, 52:13, 87:17,
129:12, 145:4,
153:25
real [1] - 79:17
realized [1] - 112:2
realizing [1] - 111:24
really [37] - 28:24,
31:8, 31:11, 36:4,
43:2, 43:3, 43:25,
45:9, 49:23, 50:2,
65:15, 68:25, 69:18,
70:6, 86:6, 86:11,
92:1, 100:4, 109:9,
113:6, 117:13,
117:16, 122:11,
123:4, 128:5,
128:22, 131:9,
139:3, 139:4,
139:25, 146:7,
147:15, 147:16,
150:7, 155:3,
156:13, 168:15
realm [1] - 153:7
realms [2] - 43:25,
155:6
rearrangements [1] -
192:20
reason [23] - 10:16,
11:22, 11:25, 15:24,
23:14, 26:8, 29:23,
35:24, 36:18, 45:1,
49:1, 51:21, 68:11,
69:22, 71:24, 73:3,
74:8, 92:5, 93:14,
123:8, 182:10,
192:8, 192:14
reasonable [1] - 91:19
reasoning [1] - 40:18
reasons [14] - 14:13,
20:5, 23:19, 23:23,
24:18, 25:8, 25:19,
26:1, 45:4, 74:9,
76:2, 76:3, 91:18,
179:7
rebut [1] - 24:22
rebuttal [1] - 10:13
receive [2] - 153:3,
153:5
received [2] - 62:13,
152:19
receiving [1] - 187:3
recent [1] - 6:14
recently [5] - 18:15,
18:18, 18:20, 113:2
recess [12] - 59:15,
59:17, 59:20, 87:9,
87:15, 139:15,
139:19, 139:22,
189:4, 189:7,
190:17, 192:23
recitation [2] - 95:1,
95:3
recite [1] - 94:7
recollection [31] -
35:21, 35:22, 36:5,
36:23, 37:5, 62:24,
69:1, 72:6, 72:14,
72:17, 79:1, 81:21,
82:6, 82:9, 82:16,
119:6, 119:20,
119:25, 122:4,
125:10, 142:19,
143:6, 160:4,
160:20, 166:9,
166:12, 167:4,
167:8, 167:15,
168:21, 170:23
recommend [2] -
176:20, 177:23
recommendation [8] -
42:22, 43:2, 44:1,
44:3, 44:8, 49:5,
51:1, 74:12
recommendations [1]
- 69:15
recommended [1] -
82:21
record [6] - 7:3, 23:1,
50:23, 59:25, 131:7
recording [1] - 54:15
records [1] - 6:19
recross [1] - 31:9
red [3] - 120:13,
162:13, 177:14
redirect [3] - 31:10,
31:11, 190:7
reestablish [1] -
138:11
reestablished [1] -
138:4
reexamine [1] - 9:7
refer [1] - 130:24
reference [6] - 90:19,
101:19, 102:1,
164:18, 170:16,
177:25
referenced [2] - 91:20,
165:8
referred [1] - 129:10
referring [5] - 17:12,
65:14, 65:19, 65:20,
70:7
refers [1] - 17:11
reflects [1] - 121:2
refresh [6] - 36:5,
36:23, 119:25,
128:18, 160:20,
167:7
refreshed [1] - 181:25
refreshes [3] - 37:4,
121:17, 125:10
refrigerator [1] -
125:15
refusal [2] - 19:6, 19:9
refused [4] - 69:6,
72:18, 160:18, 171:1
regard [1] - 109:3
regarded [2] - 109:2,
133:7
regarding [11] - 26:21,
26:23, 64:14,
117:24, 125:11,
133:5, 133:25,
135:4, 136:24,
158:23, 179:11
regardless [1] - 184:2
regular [3] - 64:13,
119:4, 173:23
regulatory [6] - 48:14,
49:3, 187:21, 188:3,
188:6, 188:10
reimburse [1] - 141:16
Reiss [3] - 3:5, 87:17,
96:20
REISS [112] - 2:3,
4:16, 4:19, 5:5, 5:8,
21:2, 21:5, 21:12,
21:17, 29:5, 29:10,
30:10, 30:13, 30:15,
30:19, 31:8, 31:11,
31:20, 31:25, 32:18,
32:25, 33:2, 33:6,
33:8, 33:12, 34:11,
34:20, 35:2, 35:5,
35:7, 35:9, 35:16,
36:9, 36:16, 36:22,
37:4, 37:14, 38:3,
38:8, 42:3, 43:8,
47:13, 47:16, 47:18,
47:21, 50:8, 51:7,
51:20, 54:8, 54:10,
59:16, 59:19, 59:24,
60:13, 60:18, 60:21,
60:23, 62:8, 67:1,
67:3, 68:7, 68:10,
69:21, 70:3, 70:8,
76:20, 80:6, 80:13,
81:8, 81:15, 82:18,
82:20, 84:10, 84:11,
84:17, 84:19, 84:21,
84:24, 85:5, 85:8,
85:11, 87:10, 87:14,
87:19, 87:21, 88:4,
88:9, 89:1, 89:7,
89:10, 89:13, 89:14,
90:1, 90:14, 90:15,
96:13, 97:1, 97:5,
97:9, 97:12, 104:18,
104:20, 105:17,
105:23, 118:2,
154:13, 171:7,
190:8, 190:12,
190:14, 190:24,
192:12
reject [1] - 182:18
rejected [2] - 74:9
rejecting [1] - 69:22
rejection [3] - 67:25,
96:3, 96:5
related [7] - 14:9,
27:7, 33:16, 34:10,
50:7, 147:6, 181:9
relates [1] - 26:21
relating [1] - 6:21
relations [4] - 58:25,
122:19, 142:24,
144:9
relationship [3] - 64:5,
120:5, 120:15
relationships [2] -
179:24, 180:1
relative [1] - 168:25
release [9] - 52:3,
75:11, 129:9,
129:11, 142:20,
151:14, 151:21,
183:20
relevance [6] - 13:21,
17:15, 25:6, 26:12,
77:4, 90:11
relevancy [1] - 90:10
Relevant [2] - 93:4,
93:21
relevant [10] - 11:7,
11:17, 14:4, 14:5,
14:7, 17:10, 19:17,
26:10, 71:8, 182:9
reliable [1] - 28:2
relied [3] - 51:9, 78:7
religion [2] - 25:2,
100:6
rely [1] - 108:9
relying [3] - 43:6,
44:10, 69:13
remainder [2] - 58:1,
58:2
remaining [1] - 117:18
remains [3] - 5:2,
21:19, 30:8
remark [1] - 64:24
remember [17] - 22:9,

- 37:7, 37:8, 62:23,
75:3, 90:20, 117:11,
124:19, 125:14,
129:24, 130:3,
130:9, 148:15,
164:3, 169:4,
171:22, 185:19
remind [1] - 133:23
removal [1] - 51:11
removed [4] - 50:14,
69:18, 98:24, 99:9
repair [1] - 129:12
repeatedly [1] -
163:14
replication [4] - 26:22,
26:25, 27:12, 30:8
report [38] - 10:6,
10:19, 10:20, 12:17,
28:1, 29:23, 37:16,
37:17, 37:19, 37:20,
37:21, 37:24, 38:24,
39:15, 39:21, 39:24,
39:25, 40:1, 40:4,
40:17, 41:13, 42:22,
65:7, 66:17, 67:6,
67:18, 67:25, 68:12,
68:16, 68:17, 68:25,
69:11, 69:18, 69:23,
73:16, 76:9, 80:22,
176:4
reported [2] - 1:18,
1:23
reporter [2] - 47:20,
59:25
Reporter [3] - 1:20,
84:20, 193:4
reporting [1] - 1:23
reports [3] - 29:21,
29:23, 68:24
represent [4] - 53:7,
80:3, 134:8, 171:25
representation [4] -
36:3, 48:1, 85:12,
140:12
representations [2] -
48:8, 77:24
representative [1] -
137:24
Representative [1] -
138:7
represented [3] -
28:20, 77:14, 131:19
representing [1] -
56:22
represents [1] - 40:25
Republican [3] -
33:20, 33:22, 148:20
Republicans [1] -
148:23
reputation [1] - 116:5
request [20] - 4:12,
4:17, 4:21, 4:22, 5:2,
6:9, 16:5, 16:25,
17:4, 17:20, 19:1,
19:18, 23:3, 34:1,
68:17, 70:14, 70:15,
70:25, 71:3, 71:21
requested [9] - 4:10,
16:24, 16:25, 17:1,
18:4, 18:5, 70:9,
71:18, 84:20
require [2] - 49:24,
53:8
required [6] - 7:24,
49:14, 55:9, 141:14,
163:21, 180:18
requirement [1] - 94:7
requirements [1] -
77:9
requires [2] - 27:10,
48:20
reread [1] - 97:14
research [7] - 18:8,
18:20, 18:24, 22:7,
22:14, 111:18,
167:14
researcher [2] - 65:16,
167:21
resentment [2] - 39:6,
64:4
reservation [1] - 113:4
residing [1] - 28:17
resistance [2] - 57:19,
58:15
resolution [1] - 186:23
resources [1] - 139:10
respect [30] - 4:16,
11:19, 19:25, 20:4,
20:11, 20:13, 20:24,
21:3, 21:22, 22:6,
34:6, 87:23, 97:7,
107:2, 124:8,
126:15, 132:10,
135:10, 137:15,
142:3, 142:25,
143:22, 146:11,
158:11, 176:20,
177:4, 178:8,
186:17, 187:16,
187:17
respected [1] - 120:16
respectful [1] - 120:17
respectfully [2] - 16:5,
19:18
respond [2] - 12:12,
175:14
responded [1] - 185:7
response [4] - 63:10,
115:16, 176:10,
188:9
responsibility [3] -
158:14, 177:20,
187:13
responsible [2] -
85:17, 160:10
rested [3] - 32:9,
103:11, 158:12
result [6] - 52:19,
52:22, 72:19,
116:10, 127:10,
157:21
results [5] - 65:5,
66:1, 66:15, 150:8,
150:17
resume [3] - 33:10,
59:22, 87:12
resumed [1] - 104:7
Resumed [1] - 3:5
resumption [1] - 52:8
Rethinking [1] - 61:5
retired [1] - 111:9
retrieve [1] - 22:8
retrieved [1] - 178:4
retrospectively [2] -
54:17, 55:4
revealing [1] - 40:5
reverse [5] - 127:24,
151:4, 151:5, 151:9,
189:25
review [17] - 39:13,
41:12, 49:5, 52:6,
54:25, 55:10, 55:20,
55:22, 65:6, 65:12,
65:20, 82:12,
116:17, 174:18,
176:15, 179:5, 186:5
reviewed [12] - 39:5,
39:9, 47:4, 47:6,
49:7, 52:4, 52:7,
82:10, 164:14,
165:23, 178:7,
179:11
reviewing [1] - 165:16
reviews [3] - 55:10,
67:21, 72:1
revise [1] - 187:7
Revised [2] - 38:13,
48:16
revolutionaries [1] -
162:17
revolutionary [1] -
131:15
Ricans [1] - 59:1
rich [1] - 102:15
Richard [5] - 2:7,
56:12, 111:5, 111:8,
126:9
RICHARD [1] - 2:8
ridiculous [1] - 22:19
rights [1] - 130:24
rigor [1] - 167:2
rigorous [4] - 65:6,
65:12, 65:20, 66:23
riled [1] - 146:20
ringing [1] - 124:20
rings [1] - 133:24
rise [1] - 98:17
risk [5] - 106:11,
106:12, 106:17,
107:19, 177:20
Road [1] - 2:23
roadmap [1] - 165:7
Robert [4] - 2:15,
2:22, 65:14, 167:9
Rodolfo [1] - 61:12
Rodriguez [3] - 111:5,
111:10, 126:11
role [2] - 99:12, 155:8
Roman [1] - 161:1
Romero [2] - 130:2,
130:16
Ronald [1] - 2:14
room [5] - 30:12, 40:7,
40:16, 132:5, 146:20
rooms [1] - 185:8
Rose [2] - 148:15,
148:19
roughly [2] - 106:23,
108:22
route [1] - 16:10
row [2] - 105:6, 126:21
Rule [2] - 7:15, 15:25
rule [8] - 4:5, 7:5,
8:11, 8:19, 28:13,
29:13, 89:11, 94:13
ruled [2] - 15:11, 30:7
rules [3] - 29:20, 94:6,
180:19
Rules [1] - 180:16
ruling [5] - 21:18,
22:1, 22:3, 28:8,
30:4
run [7] - 23:22, 27:22,
99:2, 104:23, 113:3,
113:15, 148:2
running [1] - 177:11
-
- S**
-
- s/A** [1] - 193:15
sacrificed [1] - 84:6
sake [1] - 15:8
salt [2] - 78:15, 80:2
sample [4] - 40:25,
69:8, 77:9, 176:6
samples [1] - 78:1
Sanchez [5] - 89:19,
92:3, 111:5, 111:8,
126:9
sanction [2] - 54:12,
55:12
sandbagger [1] -
21:16
sat [1] - 151:5
satisfaction [1] -
129:7
satisfactory [1] -
150:12
saw [9] - 36:20, 48:2,
48:6, 57:20, 66:17,
115:13, 163:14,
174:23, 175:12
SB10 [1] - 6:16
SB1070 [4] - 14:18,
14:21, 15:9, 136:2
scale [2] - 150:1,
150:9
scene [1] - 35:13
schedule [4] - 30:19,
72:9, 72:20, 72:22
scheduled [1] - 72:19
scheduling [3] -
30:15, 30:16, 191:25
school [75] - 4:23,
6:10, 27:7, 27:8,
27:25, 34:10, 37:11,
37:13, 44:23, 45:11,
48:18, 49:7, 50:3,
50:15, 54:13, 82:5,
82:8, 85:25, 86:16,
86:18, 104:3,
106:12, 106:13,
106:14, 107:24,
107:25, 108:2,
108:18, 109:20,
109:25, 111:20,
111:24, 117:13,
117:16, 119:15,
120:1, 127:16,
127:21, 128:8,
128:19, 133:11,
133:12, 135:11,
145:6, 145:25,
146:24, 149:25,
150:8, 150:10,
150:13, 150:15,
152:22, 157:5,
160:2, 164:17,
164:20, 169:7,
169:17, 169:19,
173:3, 174:1,
174:10, 174:13,
174:22, 175:5,
175:9, 175:12,
175:13, 175:19,
176:2, 177:11,
185:10, 185:14
School [44] - 2:14,
27:6, 27:8, 30:1,
34:9, 35:25, 36:6,

- 36:25, 38:15, 52:8,
55:1, 55:11, 67:20,
71:4, 71:25, 72:4,
75:13, 81:9, 83:14,
84:5, 84:13, 85:19,
86:6, 86:12, 89:20,
90:24, 91:18, 91:20,
92:16, 94:5, 97:25,
111:4, 111:10,
119:18, 126:10,
126:15, 127:5,
127:25, 145:21,
170:10, 170:15,
171:24, 181:20
- school-wide** [1] -
175:9
- Schools** [2] - 152:25,
153:4
- schools** [25] - 34:6,
48:21, 49:12, 49:13,
49:14, 50:14, 51:13,
78:4, 99:17, 112:22,
113:10, 113:20,
113:22, 150:1,
150:6, 150:15,
152:17, 153:1,
153:9, 172:2, 172:3,
173:4, 173:10, 188:4
- schoolwork** [1] - 24:7
- science** [3] - 147:22,
154:25, 155:5
- scientific** [1] - 150:14
- scope** [6] - 67:18,
68:12, 69:24, 71:1,
71:3, 71:20
- Scope** [1] - 71:1
- scores** [6] - 65:15,
110:15, 110:18,
150:9, 155:21,
155:23
- Scott** [1] - 167:14
- scrapped** [1] - 63:8
- se** [3] - 43:3, 92:20
- Sean** [1] - 129:21
- searches** [1] - 153:6
- seat** [1] - 106:8
- seated** [5] - 4:3, 59:21,
87:16, 139:23, 189:8
- Seattle** [2] - 2:14, 2:16
- second** [25] - 6:1,
8:19, 9:3, 27:7, 31:3,
51:6, 67:19, 71:10,
71:13, 71:24, 71:25,
73:3, 128:9, 128:11,
153:12, 167:17,
169:5, 169:10,
169:11, 169:12,
169:13, 169:14,
169:20, 169:22,
186:25
- sectarian** [2] - 48:22,
49:15
- Section** [12] - 46:25,
48:15, 48:18, 49:9,
50:15, 56:8, 71:15,
83:2, 83:8, 91:16,
91:22, 91:24
- section** [1] - 93:7
- see** [80] - 4:20, 10:4,
16:24, 23:2, 26:19,
27:18, 27:22, 27:24,
33:4, 34:9, 39:25,
44:7, 46:24, 47:5,
48:15, 48:16, 48:24,
56:12, 56:20, 59:7,
61:3, 61:14, 66:21,
66:22, 70:18, 70:23,
70:25, 87:17, 90:19,
113:13, 123:21,
125:16, 127:16,
127:18, 127:20,
127:21, 127:23,
127:24, 129:19,
130:18, 137:18,
139:19, 139:23,
140:15, 152:2,
159:25, 160:6,
160:19, 161:10,
163:15, 163:24,
163:25, 165:15,
165:18, 166:5,
168:15, 170:12,
171:22, 171:25,
172:3, 172:8,
172:22, 173:10,
173:18, 174:4,
174:7, 174:18,
174:21, 174:24,
176:2, 182:9,
182:12, 187:1,
187:5, 188:12,
191:25, 192:2,
192:8, 192:21
- seeing** [4] - 32:20,
39:24, 40:6, 132:25
- seek** [2] - 186:4, 187:5
- seem** [3] - 54:3, 86:20,
112:22
- sees** [1] - 161:19
- selected** [1] - 57:18
- selection** [1] - 158:3
- selective** [2] - 58:9,
58:10
- selectiveness** [1] -
58:11
- selectivity** [1] - 59:8
- self** [1] - 59:3
- self-affirmation** [1] -
59:3
- selling** [1] - 97:19
- semester** [17] - 52:12,
53:20, 55:2, 145:3,
145:8, 153:20,
153:22, 169:5,
169:11, 169:12,
169:13, 169:14,
169:16, 169:20,
169:22, 185:11
- seminars** [4] - 155:1,
155:2, 156:4, 156:25
- Senate** [10] - 99:11,
116:4, 116:8,
124:21, 124:24,
135:2, 138:2,
144:15, 168:10
- Senator** [4] - 6:15, 7:3,
15:23, 99:20
- send** [2] - 92:13, 177:7
- sends** [1] - 28:12
- senior** [1] - 169:23
- seniors** [6] - 169:5,
169:11, 169:12,
169:14, 169:20
- sense** [23] - 46:12,
82:12, 94:10, 94:15,
94:21, 111:22,
119:21, 120:7,
120:11, 122:6,
132:13, 133:1,
133:7, 133:13,
134:10, 138:10,
147:9, 162:6,
162:18, 182:1,
184:13, 190:17
- sent** [1] - 92:3
- sentence** [8] - 39:4,
58:1, 58:2, 58:4,
58:5, 58:6, 70:5,
161:2
- separate** [1] - 65:22
- separately** [1] -
133:15
- separating** [1] - 68:24
- sequence** [1] - 169:17
- Serengeti** [1] - 87:3
- series** [1] - 127:18
- serious** [8] - 11:2,
11:9, 11:19, 11:23,
11:24, 12:2, 12:24,
131:6
- seriously** [1] - 79:11
- serve** [1] - 129:8
- served** [3] - 92:24,
116:23, 149:12
- server** [1] - 28:17
- service** [11] - 27:15,
42:19, 43:7, 43:25,
79:25, 88:13,
114:18, 116:23,
129:6, 156:12,
187:22
- session** [6] - 118:16,
136:12, 136:15,
143:18, 143:19,
144:1
- sessions** [3] - 7:13,
173:5
- set** [6] - 54:19, 144:5,
144:23, 145:1,
151:21, 155:13
- setting** [1] - 52:11
- settlement** [2] - 91:17,
91:21
- seven** [1] - 185:10
- several** [16] - 5:13,
11:6, 42:6, 51:8,
67:15, 67:17, 85:18,
95:17, 114:6, 122:7,
143:7, 148:2, 166:4,
174:10, 180:25,
188:2
- severe** [2] - 56:15,
188:7
- shall** [2] - 52:22, 83:8
- sharp** [3] - 123:22,
123:25, 124:14
- shirt** [1] - 120:13
- shockwave** [1] -
124:23
- short** [4] - 96:11,
96:15, 97:2, 114:15
- shortcomings** [1] -
150:16
- shortened** [1] - 119:5
- shorthand** [4] - 1:23,
98:6, 98:7, 100:9
- shot** [2] - 130:22,
131:16
- show** [9] - 7:23, 7:25,
8:6, 10:1, 154:4,
161:9, 182:15,
183:13, 183:23
- showed** [2] - 24:17,
65:25
- showing** [11] - 7:4,
7:24, 10:11, 22:5,
22:17, 22:21, 24:22,
25:4, 35:8, 55:21,
119:23
- shown** [2] - 10:15,
14:11
- shrinking** [1] - 128:10
- side** [10] - 4:10, 4:13,
4:14, 32:21, 86:9,
86:22, 120:7,
121:17, 144:15,
182:13
- sides** [4] - 8:20, 30:17,
34:19, 148:24
- sideshows** [3] - 25:5,
26:4, 26:11
- signature** [3] - 82:24,
83:2, 89:22
- signed** [3] - 83:10,
83:13, 89:24
- Signed** [1] - 193:11
- significant** [4] - 44:17,
45:14, 45:18, 65:9
- signs** [1] - 113:14
- similar** [8] - 23:13,
23:17, 48:1, 48:8,
55:10, 94:10, 148:7,
155:16
- similarly** [1] - 149:11
- simple** [1] - 72:23
- simply** [17] - 21:6,
55:5, 57:21, 85:23,
86:11, 86:20, 92:19,
96:16, 101:6,
105:11, 150:23,
154:24, 155:7,
156:25, 162:18,
167:1
- simultaneously** [1] -
103:6
- single** [8] - 43:11,
61:6, 107:10,
111:13, 115:17,
129:7, 179:14,
185:11
- sister** [1] - 27:7
- sisters** [1] - 107:24
- sit** [4] - 22:1, 74:11,
114:23, 146:19
- site** [4] - 34:6, 67:21,
72:1, 161:25
- sitting** [4] - 125:2,
132:5, 169:4, 185:3
- situated** [1] - 149:11
- situation** [9] - 28:4,
44:10, 50:22, 51:5,
56:4, 104:22,
126:20, 164:24,
185:6
- situations** [1] - 147:17
- six** [3] - 61:14, 61:22,
62:3
- sixth** [3] - 108:17,
108:18, 110:19
- size** [3] - 69:8, 77:2,
176:6
- sizes** [2] - 77:8, 77:9
- skeptical** [1] - 80:4
- skills** [5] - 107:1,
109:18, 115:5,
147:21, 151:10
- skinheads** [1] - 99:2
- slaughter** [1] - 130:21
- slave** [1] - 99:15
- small** [10] - 42:1, 45:6,

- 45:8, 45:19, 45:22,
45:24, 46:1, 46:2,
69:8, 77:8
snarky [1] - 100:18
sneaky [1] - 139:18
social [2] - 167:24,
187:7
socialism [1] - 57:23
Society [1] - 99:14
society [4] - 57:22,
58:23, 131:10,
162:20
socio [5] - 56:14,
56:16, 107:20,
126:17, 184:2
socio-economic [4] -
56:14, 56:16,
126:17, 184:2
socio-economically
[1] - 107:20
software [6] - 1:23,
108:13, 108:14,
168:13, 168:14,
168:15
sole [1] - 16:16
solely [2] - 39:13,
39:17
solidarity [3] - 93:24,
93:25, 179:21
solutions [1] - 115:9
solve [5] - 114:24,
115:21, 115:22,
132:6
solves [1] - 114:21
solving [1] - 132:3
someone [2] - 12:20,
80:8
sometime [1] - 136:14
somewhere [1] -
128:13
soon [1] - 118:16
sorrier [1] - 190:16
sorry [13] - 6:17, 19:7,
21:12, 63:3, 67:1,
78:22, 97:22, 154:4,
182:22, 183:19,
188:22, 189:5,
190:15
sort [18] - 27:20, 70:5,
75:16, 94:9, 100:20,
103:2, 103:11,
103:19, 114:22,
116:15, 120:4,
131:3, 133:17,
135:11, 135:13,
137:24, 138:3,
184:14
sorts [1] - 185:7
sounds [1] - 107:16
source [6] - 79:16,
79:19, 80:9, 80:16,
80:17
sources [5] - 75:23,
76:5, 76:10, 76:13,
77:20
south [5] - 103:17,
106:13, 107:17,
107:23, 121:17
South [7] - 108:19,
109:7, 111:3, 117:5,
123:7, 161:5
southwest [1] - 61:18
Spanish [6] - 24:8,
95:19, 95:20, 112:1
spanning [1] - 75:19
speaker [1] - 174:24
speaking [4] - 5:24,
14:24, 21:8, 29:20
speaks [1] - 79:14
specific [18] - 35:22,
37:8, 38:25, 63:6,
63:7, 63:11, 73:1,
82:6, 82:9, 82:16,
92:15, 119:6,
129:25, 130:6,
134:13, 166:13,
167:4, 167:15
specifically [18] -
6:12, 6:15, 17:9,
22:16, 29:21, 52:10,
53:10, 54:1, 57:6,
57:13, 67:15, 67:17,
68:17, 70:9, 72:12,
150:7, 160:17,
177:25
specifics [7] - 124:18,
125:7, 130:9,
130:11, 166:9,
168:22, 186:21
specified [1] - 193:10
spectacular [4] -
125:25, 148:7,
151:12, 155:7
spectacularly [1] -
147:17
speculate [1] - 43:17
speech [2] - 100:6,
130:24
speed [1] - 20:3
spend [3] - 93:18,
115:25, 123:10
spent [10] - 34:8, 57:4,
66:7, 100:19,
112:12, 112:15,
115:11, 123:14,
123:15, 172:9
spiritual [1] - 94:9
split [1] - 133:8
spoken [2] - 34:13,
112:1
sponsor [7] - 6:25,
23:9, 24:1, 25:12,
25:14, 25:15, 27:21
sponsored [1] - 20:5
sponsorship [2] -
25:17, 25:25
spread [1] - 133:2
squeaky [1] - 115:18
St [2] - 2:15, 111:4
Stacey [1] - 142:23
staff [35] - 46:3, 51:9,
55:21, 56:21, 56:23,
57:10, 59:5, 67:7,
72:12, 72:24, 74:12,
77:15, 77:17, 78:7,
78:13, 79:16, 79:19,
80:7, 80:11, 82:11,
91:9, 91:12, 92:2,
95:2, 142:6, 142:17,
164:21, 176:15,
176:20, 177:22,
178:6, 178:7,
179:10, 187:20
staffer [2] - 144:15,
144:17
stand [7] - 33:10,
59:17, 94:7, 104:24,
129:12, 139:19,
192:22
standard [8] - 8:21,
8:22, 18:2, 20:17,
110:4, 110:25,
145:23
standards [17] - 50:2,
70:15, 70:17, 71:8,
91:2, 101:9, 107:7,
140:15, 155:13,
155:19, 155:25,
156:3, 156:6,
156:12, 156:18,
156:22, 179:17
Standards [7] -
102:24, 155:10,
155:12, 155:18,
155:21, 156:16,
157:3
standing [1] - 123:4
Stanford [2] - 107:17,
109:8
star [1] - 161:15
stars [1] - 119:15
start [7] - 94:25,
106:5, 161:15,
162:4, 171:18,
190:21, 191:2
started [4] - 68:25,
106:11, 155:22,
185:9
starting [4] - 39:4,
63:1, 172:15, 190:17
starts [4] - 75:17,
104:10, 116:3,
120:21
State [9] - 8:25, 9:1,
60:9, 71:8, 84:6,
141:6, 148:2,
152:17, 185:18
state [38] - 14:21,
20:21, 24:20, 27:9,
27:10, 30:23, 31:2,
31:16, 50:18, 52:22,
53:3, 53:8, 53:11,
53:15, 53:25, 60:15,
83:5, 83:14, 86:25,
87:23, 87:25, 89:2,
89:4, 99:16, 106:22,
110:2, 110:5, 115:3,
132:4, 133:2,
133:24, 137:15,
138:5, 138:22,
139:10, 141:10,
181:3, 188:11
state's [1] - 4:16
State's [2] - 20:15,
155:9
statement [13] - 74:4,
74:5, 74:11, 74:12,
74:15, 74:16, 77:1,
77:3, 77:6, 89:8,
125:3, 178:11,
178:16
statements [3] -
96:10, 130:16,
166:12
STATES [1] - 1:1
States [2] - 99:13,
193:5
states [10] - 23:13,
23:17, 66:3, 76:15,
110:7, 110:14,
155:16, 156:18,
156:21, 157:2
statewide [4] - 107:15,
149:14, 149:16,
149:17
stating [1] - 20:17
stations [2] - 95:19,
95:20
statistically [1] - 71:12
statistics [2] - 77:1,
159:18
status [2] - 126:17,
184:2
statute [21] - 38:20,
47:10, 49:16, 51:10,
51:13, 52:10, 53:7,
81:20, 82:5, 82:8,
82:15, 136:8, 137:2,
137:20, 138:15,
141:4, 143:23,
146:13, 158:12,
180:5, 180:18
statutes [4] - 6:14,
144:14, 144:18,
187:18
Statutes [2] - 38:13,
48:17
Statutory [1] - 64:3
statutory [3] - 48:14,
49:3, 158:14
stay [1] - 61:1
steel [1] - 143:8
steer [1] - 132:7
Stegeman [3] -
133:20, 134:5,
134:11
stellar [1] - 50:23
stenographic [1] -
1:23
step [5] - 69:18, 87:12,
139:17, 187:12,
191:16
steps [1] - 119:8
stereotypes [1] -
179:25
STEVEN [1] - 2:3
stick [1] - 169:23
still [12] - 17:17, 18:3,
21:22, 28:23, 55:3,
56:14, 56:18, 64:23,
139:24, 162:25,
175:18, 184:11
stipulate [3] - 21:3,
96:10, 96:14
stipulated [11] - 22:23,
34:13, 34:14, 35:3,
38:3, 82:18, 97:6,
97:10, 97:21, 159:4,
183:24
stipulation [6] - 5:18,
22:25, 96:19, 96:24,
154:9
Stollar [9] - 43:24,
50:20, 56:1, 69:14,
73:15, 157:10,
157:12, 157:16,
181:2
stonewalling [1] -
18:15
stood [2] - 52:5,
119:12
stop [1] - 72:3
stopped [2] - 104:5,
155:23
stories [1] - 165:6
story [1] - 131:18
straight [1] - 146:13
strategically [1] - 86:4
strategy [3] - 85:12,
85:15, 85:21

- Street** [3] - 2:12, 2:20, 146:17
streets [1] - 58:20
stressed [1] - 75:24
stressful [1] - 103:4
stretch [1] - 85:13
stretched [2] - 86:2, 86:4
stricken [2] - 29:13, 47:1
strike [2] - 171:7, 171:9
striker [2] - 116:2, 116:7
strikers [7] - 116:5, 116:9, 116:14, 116:16, 116:18, 116:20
strong [2] - 52:4, 132:18
struck [2] - 14:18, 47:11
structure [2] - 100:14, 101:23
struggles [1] - 146:23
struggling [1] - 127:9
student [22] - 71:11, 71:12, 100:24, 101:11, 107:10, 109:6, 111:1, 111:2, 112:8, 120:15, 124:23, 124:25, 149:6, 149:7, 149:10, 157:4, 159:18, 161:11, 166:20, 168:20, 169:2, 170:8
student-teacher [1] - 120:15
students [140] - 46:12, 46:17, 58:21, 64:8, 64:14, 65:4, 65:10, 65:18, 77:25, 78:1, 78:2, 85:18, 94:7, 102:12, 104:25, 105:13, 106:11, 106:15, 106:16, 106:20, 106:21, 107:5, 107:12, 107:13, 107:19, 107:20, 108:2, 108:4, 108:5, 108:7, 108:10, 108:25, 109:5, 109:7, 109:10, 109:17, 111:14, 111:16, 111:23, 112:2, 112:9, 112:11, 113:8, 117:18, 118:13, 120:4, 120:5, 120:6, 120:10, 120:14, 120:17, 121:1, 121:11, 122:7, 122:24, 122:25, 123:19, 124:5, 124:9, 124:11, 124:16, 124:21, 125:1, 125:3, 125:5, 125:11, 125:23, 126:2, 126:6, 126:7, 126:14, 126:16, 126:17, 127:11, 127:13, 128:3, 128:7, 128:14, 128:15, 128:19, 128:20, 128:25, 129:4, 129:16, 130:7, 130:11, 131:8, 131:11, 140:22, 140:24, 147:5, 149:14, 149:20, 149:21, 150:23, 150:24, 150:25, 151:10, 151:25, 152:3, 152:8, 155:16, 156:1, 157:5, 159:19, 159:22, 160:2, 160:7, 160:9, 160:10, 161:18, 162:10, 162:19, 162:20, 165:1, 165:3, 165:4, 168:14, 168:15, 168:25, 169:13, 173:4, 173:9, 173:20, 173:21, 175:5, 177:7, 177:10, 177:21, 179:20, 179:21
Students [1] - 167:7
students' [1] - 98:9
studied [1] - 130:20
Studies [26] - 38:16, 47:25, 48:5, 52:3, 52:10, 52:21, 53:16, 65:5, 67:22, 71:5, 73:5, 74:7, 75:20, 76:25, 98:16, 98:18, 99:7, 102:12, 119:16, 129:13, 132:11, 133:16, 135:14, 146:11, 160:21, 161:10
studies [37] - 48:9, 50:1, 50:7, 65:24, 66:5, 66:6, 66:8, 66:12, 66:19, 85:18, 92:20, 98:7, 101:20, 113:25, 114:4, 122:11, 133:19, 140:16, 140:18, 140:20, 145:22, 147:8, 152:10, 152:13, 152:16, 152:20, 153:8, 165:4, 165:11, 167:22, 168:2, 173:6, 181:9, 184:6, 184:12, 187:7
Study [1] - 167:7
study [4] - 50:4, 50:6, 66:21, 170:4
stuff [3] - 44:17, 148:7, 192:20
stunning [1] - 156:25
subheading [1] - 48:13
Subheading [1] - 94:5
subject [16] - 10:6, 13:17, 13:22, 14:9, 16:3, 16:23, 23:24, 26:2, 29:13, 29:18, 71:6, 89:21, 95:8, 116:7, 116:8, 125:6
subjected [2] - 65:6, 65:12
submit [2] - 8:23, 18:4
submitted [3] - 5:13, 31:6, 39:6
subpoena [6] - 17:3, 17:17, 17:18, 17:19, 19:1, 20:24
subsection [1] - 48:20
Subsection [1] - 61:14
subsequently [1] - 47:1
substance [4] - 7:6, 182:21, 182:24, 183:6
substantial [3] - 10:25, 26:19, 166:14
substantiated [1] - 161:3
substitute [4] - 69:8, 73:23, 170:24, 175:8
subtext [1] - 102:15
succeed [3] - 108:6, 128:19, 151:25
succeeded [1] - 112:17
succeeding [3] - 109:19, 127:14, 128:20
success [6] - 56:14, 56:16, 96:5, 111:19, 126:13, 157:6
successes [1] - 127:18
successful [18] - 86:13, 108:24, 109:2, 109:4, 109:9, 109:19, 111:14, 112:20, 113:24, 114:20, 126:19, 126:20, 127:4, 133:11, 147:18, 165:6, 165:11, 177:11
sucking [1] - 156:13
Sudetenland [1] - 98:18
suffer [2] - 56:15, 156:20
sufficient [4] - 144:3, 154:12, 167:2, 190:20
suggest [2] - 16:22, 170:14
suggested [1] - 119:10
suggesting [2] - 165:19, 165:22
Suite [1] - 1:21
sum [2] - 182:21, 182:24
Summary [1] - 171:24
summary [3] - 14:20, 38:12, 96:16
summer [7] - 52:13, 53:22, 55:3, 145:4, 153:23, 153:24
Sunnyside [4] - 111:10, 126:10, 151:5, 151:8
Superintendent [13] - 1:7, 12:18, 13:4, 38:14, 79:13, 89:20, 89:21, 91:8, 135:13, 137:23, 138:8, 142:3
superintendent [38] - 26:7, 33:19, 53:2, 75:17, 75:18, 83:3, 85:17, 88:12, 89:17, 92:8, 92:9, 101:14, 105:1, 106:8, 109:22, 109:24, 112:15, 126:23, 127:2, 129:2, 129:24, 131:24, 132:9, 133:2, 137:14, 138:5, 139:6, 139:12, 141:6, 141:14, 145:9, 146:3, 146:4, 149:7, 149:24, 151:2, 158:15, 183:15
superintendent's [1] - 76:2
superintendents [6] - 90:23, 105:7, 127:4, 145:16, 145:20, 154:19
Superior [1] - 185:18
superstar [4] - 92:22, 145:16, 146:1, 147:16
supervise [1] - 157:18
support [5] - 56:7, 61:4, 164:25, 177:15, 184:19
supported [4] - 20:5, 101:9, 165:2, 179:7
supporting [2] - 156:17, 175:22
suppose [3] - 27:15, 28:16, 28:18
supposed [5] - 71:17, 164:22, 170:18, 175:19, 175:20
supposedly [1] - 38:21
surgery [1] - 44:25
surprise [2] - 12:9, 12:11
surprised [2] - 23:16, 79:10
survive [1] - 53:24
suspect [1] - 190:8
suspend [1] - 186:20
suspicion [2] - 161:6, 184:18
sustained [3] - 36:14, 62:7, 84:9
swept [1] - 58:18
system [6] - 45:1, 57:21, 58:22, 149:25, 150:8, 150:16
systems [1] - 99:6
-
- T**
-
- table** [3] - 66:21, 167:1, 167:5
tail [1] - 85:20
tailored [1] - 22:16
Talented [1] - 173:6
talents [1] - 127:6
targeted [1] - 15:23
targeting [1] - 149:15
Tashima [1] - 1:13
task [5] - 14:15, 51:3, 56:2, 56:3, 166:19
tasked [1] - 82:11
tasks [1] - 163:20
taught [12] - 99:6, 99:23, 108:18,

- 111:7, 113:9, 114:3,
142:14, 147:5,
153:4, 163:8, 163:9,
179:11
taxpayer ^[1] - 188:7
taxpayers ^[1] - 55:1
teach ^[9] - 101:8,
106:21, 108:17,
109:17, 112:21,
113:13, 115:6,
131:11, 150:13
Teacher ^[1] - 93:23
teacher ^[23] - 99:22,
100:8, 101:10,
106:9, 111:12,
112:18, 119:11,
119:14, 120:12,
120:15, 151:4,
157:12, 162:1,
163:11, 172:8,
172:22, 173:14,
173:18, 173:19,
173:23, 174:4,
175:8, 177:15
teachers ^[46] - 40:14,
41:18, 46:12, 46:17,
64:11, 69:3, 69:6,
69:9, 72:16, 72:18,
73:23, 77:13, 78:2,
78:5, 79:15, 99:8,
102:13, 112:17,
114:1, 114:2, 114:4,
115:5, 119:12,
131:11, 147:8,
150:12, 155:2,
155:4, 156:5, 156:8,
156:9, 156:10,
156:11, 156:16,
156:17, 160:15,
162:7, 165:1,
170:24, 171:1,
172:12, 172:17,
172:21, 175:22,
184:20
teaching ^[28] - 40:15,
102:11, 103:24,
106:11, 106:14,
106:24, 107:1,
108:4, 108:16,
130:7, 140:22,
140:24, 151:10,
155:16, 162:2,
170:19, 170:22,
170:24, 171:2,
173:14, 173:19,
174:11, 174:21,
175:1, 175:3,
175:10, 176:3, 176:5
team ^[3] - 79:9,
133:13, 174:7
tearfully ^[1] - 19:16
technical ^[6] - 132:3,
137:23, 142:8,
143:2, 143:4, 146:10
technically ^[1] - 34:21
technique ^[1] - 98:16
techniques ^[5] -
127:20, 127:22,
134:17, 134:19,
148:11
temperate ^[2] -
103:13, 103:16
temperature ^[1] -
136:25
tenacious ^[3] - 19:11,
20:22
Tennessee ^[1] - 93:12
tense ^[1] - 72:15
tenth ^[1] - 38:6
tenuous ^[1] - 25:3
tenure ^[1] - 177:12
term ^[2] - 88:13, 91:6
terminate ^[8] - 49:4,
50:13, 51:22, 52:9,
52:15, 81:13, 141:7,
184:8
terminated ^[2] - 84:13,
90:7
terminates ^[1] - 88:20
terminating ^[3] - 49:1,
52:2, 184:21
termination ^[1] -
81:10
terms ^[10] - 12:21,
55:8, 86:5, 94:10,
94:24, 154:24,
179:16, 180:5,
181:7, 181:8
terrible ^[1] - 148:22
test ^[2] - 107:11, 113:5
testified ^[8] - 29:6,
34:5, 43:22, 54:11,
68:19, 92:1, 181:1,
181:3
testify ^[6] - 10:24,
17:3, 17:20, 19:1,
30:24, 35:11
testifying ^[4] - 28:1,
37:2, 62:6, 135:12
testimony ^[12] - 29:12,
31:6, 41:16, 41:19,
41:21, 44:13, 47:11,
52:15, 52:16, 77:5,
139:19, 183:5
testing ^[1] - 119:5
text ^[4] - 58:6, 58:9,
58:12, 58:14
textbook ^[1] - 173:24
textbooks ^[2] - 80:23,
102:9
THE ^[209] - 1:1, 1:2,
4:3, 4:18, 4:20, 5:7,
5:10, 5:20, 5:23, 6:8,
6:17, 6:21, 6:24, 7:4,
7:9, 7:12, 7:17, 7:20,
7:23, 8:2, 8:4, 8:6,
8:9, 8:12, 8:16, 9:15,
9:19, 9:22, 9:25,
10:8, 10:12, 11:11,
11:22, 12:2, 12:8,
12:11, 12:19, 13:5,
13:10, 13:13, 13:15,
13:22, 13:24, 14:2,
14:5, 14:22, 14:24,
15:2, 15:6, 15:14,
15:17, 15:20, 16:7,
16:12, 16:16, 17:18,
17:22, 18:6, 18:11,
18:18, 18:23, 19:4,
19:8, 19:20, 19:24,
20:8, 21:1, 21:4,
21:8, 21:13, 21:18,
26:22, 26:25, 27:4,
28:7, 28:10, 29:8,
29:11, 30:11, 30:18,
31:7, 31:10, 31:18,
31:23, 32:3, 32:10,
32:14, 32:19, 33:1,
33:3, 33:7, 33:9,
34:18, 34:21, 35:3,
35:14, 36:14, 36:19,
37:6, 41:22, 42:15,
42:17, 43:13, 44:14,
47:15, 47:17, 49:20,
50:17, 51:16, 51:25,
59:14, 59:17, 59:21,
60:11, 60:14, 60:16,
60:20, 62:7, 63:19,
63:21, 66:4, 66:24,
68:5, 68:8, 68:21,
70:1, 70:12, 76:16,
76:18, 79:23, 80:12,
81:5, 81:14, 84:9,
84:23, 87:8, 87:12,
87:16, 87:20, 88:3,
88:5, 88:8, 89:6,
89:9, 89:11, 90:4,
90:6, 90:9, 90:12,
96:19, 96:25, 97:4,
97:6, 104:19,
105:20, 105:25,
118:4, 118:7,
139:14, 139:17,
139:21, 139:23,
140:4, 140:6, 154:4,
154:11, 171:9,
171:11, 182:3,
182:5, 182:8,
182:15, 182:19,
182:21, 182:24,
183:1, 183:5,
183:12, 185:22,
186:1, 186:4, 186:7,
188:17, 188:18,
188:19, 188:21,
188:24, 189:3,
189:8, 189:10,
190:7, 190:11,
190:13, 190:15,
190:19, 190:22,
190:25, 191:3,
191:7, 191:10,
191:11, 191:12,
191:18, 191:19,
191:23, 192:5,
192:8, 192:14,
192:18
themselves ^[8] - 6:20,
7:3, 85:16, 85:22,
86:3, 133:17,
133:18, 153:22
Theory ^[3] - 56:12,
56:21, 57:11
theory ^[2] - 57:1, 57:8
therefore ^[2] - 10:20,
76:1
therein ^[1] - 193:10
they've ^[6] - 7:12,
83:17, 105:12,
127:10, 151:7,
155:22
thinking ^[8] - 23:10,
64:13, 70:13,
120:19, 123:2,
123:16, 142:19,
153:21
third ^[13] - 9:8, 17:12,
21:10, 63:1, 63:4,
64:20, 64:22, 67:14,
107:6, 108:22,
111:7, 154:3
thirds ^[11] - 67:18,
68:3, 68:11, 68:14,
68:16, 69:23, 70:6,
70:9, 71:16, 71:18,
108:22
Thomas ^[1] - 2:23
thoroughly ^[1] -
130:25
thoroughness ^[1] -
181:16
thoughts ^[1] - 123:18
thousand ^[1] - 144:20
thousandth ^[1] -
160:11
threatening ^[2] -
105:10, 105:15
three ^[13] - 43:24,
48:6, 50:18, 71:14,
105:6, 107:7,
107:13, 126:21,
143:10, 154:22,
160:7, 172:3, 173:5
throats ^[1] - 137:25
throughout ^[1] -
152:17
Thucydides ^[3] -
102:4, 102:5, 102:7
Thursday ^[2] - 31:4,
192:11
tide ^[1] - 59:2
tie ^[2] - 12:17, 120:13
tied ^[1] - 13:3
tight ^[1] - 184:25
timeline ^[1] - 97:2
timing ^[5] - 53:19,
98:22, 143:3,
143:22, 145:8
tip ^[1] - 85:20
tired ^[1] - 101:24
title ^[1] - 56:7
Title ^[1] - 48:17
today ^[11] - 4:4, 17:20,
17:22, 17:23, 30:23,
33:1, 67:19, 68:13,
159:24, 163:13,
188:15
together ^[17] - 24:13,
86:13, 86:21, 128:6,
128:23, 128:24,
129:3, 133:9,
133:12, 133:17,
143:15, 145:7,
175:15, 177:9,
184:16, 185:2, 185:8
Tokyo ^[1] - 58:19
tolerated ^[1] - 102:14
Tom ^[3] - 38:14,
129:11, 154:20
tomorrow ^[9] - 31:2,
33:3, 190:18,
191:15, 191:20,
192:6, 192:19,
192:22, 192:23
tone ^[1] - 103:16
tones ^[1] - 165:18
tonight ^[1] - 192:21
took ^[23] - 16:4, 26:6,
36:7, 58:20, 65:17,
78:14, 81:23, 115:2,
115:3, 123:8, 123:9,
124:22, 124:24,
125:1, 125:4,
130:22, 143:11,
145:12, 145:15,
146:6, 148:4, 148:6,
162:24
top ^[10] - 46:24, 47:4,
50:19, 65:16, 66:8,
105:8, 126:25,
127:1, 148:6

- top-notch** [2] - 50:19, 65:16
topic [3] - 33:16, 124:16, 166:18
topics [1] - 120:25
total [1] - 102:12
totalitarian [1] - 156:6
totally [1] - 103:1
touch [2] - 187:20, 188:5
tough [1] - 103:17
towards [5] - 17:7, 39:3, 39:6, 98:9, 149:3
town [1] - 192:15
toxic [5] - 100:14, 102:1, 122:16, 122:21, 122:24
tracked [1] - 95:15
TRACY [1] - 193:3
Tracy [3] - 1:19, 193:15, 193:16
trade [1] - 99:15
tradition [1] - 121:6
traffic [1] - 192:18
train [1] - 162:16
trained [2] - 117:1, 156:11
training [3] - 156:5, 156:9
trainings [1] - 156:15
Transcript [1] - 1:15
transcript [11] - 1:18, 1:23, 99:19, 117:24, 118:3, 118:5, 121:7, 121:16, 123:23, 193:8, 193:10
transition [2] - 145:11, 145:15
transparent [1] - 114:16
trap [1] - 143:8
treasure [1] - 18:16
treat [3] - 34:18, 34:22, 35:1
trend [1] - 155:23
trial [11] - 7:9, 9:9, 9:10, 9:11, 9:16, 9:23, 10:11, 22:18, 34:24, 104:21, 104:22
Trial [1] - 1:16
trials [3] - 25:9, 26:4, 104:11
tribe [1] - 113:15
tried [2] - 121:11, 132:7
trouble [1] - 130:18
troubles [2] - 56:18, 134:22
troubling [2] - 130:12, 130:17
trove [1] - 18:16
true [13] - 28:20, 29:24, 30:2, 39:1, 41:10, 46:8, 78:6, 78:8, 81:6, 126:5, 186:3, 193:8
truly [1] - 115:22
trusted [1] - 104:23
trustworthy [2] - 76:10, 76:13
truth [1] - 99:21
try [8] - 22:8, 44:7, 78:21, 103:15, 120:7, 121:3, 191:14, 192:9
trying [14] - 9:9, 18:8, 26:18, 34:9, 86:5, 92:17, 120:18, 121:2, 121:9, 145:12, 164:3, 179:24, 182:15, 183:13
Tucson [50] - 1:5, 1:21, 2:9, 4:23, 38:15, 52:8, 54:21, 55:1, 55:11, 67:19, 71:4, 71:25, 72:4, 75:13, 79:2, 81:9, 84:5, 84:12, 85:19, 86:6, 86:12, 89:20, 90:24, 91:17, 91:19, 92:16, 94:5, 97:25, 103:17, 105:14, 107:23, 108:3, 109:7, 111:3, 117:5, 121:18, 123:7, 126:15, 127:12, 131:22, 131:24, 132:9, 132:11, 132:24, 161:5, 164:21, 170:10, 170:14, 181:20, 193:11
Tuesday [1] - 33:1
turn [1] - 157:15
turned [4] - 42:18, 50:21, 56:1, 118:22
turning [1] - 147:24
TUSD [69] - 39:9, 52:20, 79:2, 83:14, 86:20, 91:1, 92:13, 104:25, 105:1, 105:6, 105:10, 105:14, 105:16, 120:1, 126:20, 127:3, 127:9, 127:12, 127:13, 127:23, 127:24, 128:3, 128:5, 128:8, 128:23, 128:24, 129:3, 129:8, 129:15, 132:15, 132:19, 132:20, 133:5, 133:8, 133:21, 134:12, 135:11, 135:12, 135:13, 143:17, 145:3, 145:10, 146:5, 146:8, 146:12, 146:25, 147:3, 150:6, 151:18, 152:8, 152:14, 153:16, 159:20, 160:7, 172:13, 175:12, 177:8, 177:23, 180:2, 181:10, 184:5, 184:8, 184:11, 184:23, 186:12, 186:14, 186:17, 187:5, 189:18
TUSD's [12] - 71:10, 75:20, 142:4, 142:11, 149:6, 149:7, 149:10, 158:11, 159:18, 167:14, 177:4, 184:21
TV [1] - 95:20
two [41] - 4:5, 4:10, 5:13, 18:14, 18:25, 19:24, 23:9, 29:17, 31:14, 42:19, 43:23, 48:8, 65:14, 67:18, 68:3, 68:11, 68:14, 68:16, 69:13, 69:23, 70:6, 70:9, 71:11, 71:16, 71:18, 93:17, 103:5, 105:7, 107:5, 107:7, 108:22, 137:11, 138:12, 145:23, 147:20, 151:18, 164:7, 173:4, 173:10, 186:25
two-page [1] - 186:25
two-thirds [11] - 67:18, 68:3, 68:11, 68:14, 68:16, 69:23, 70:6, 70:9, 71:16, 71:18, 108:22
type [1] - 134:18
typed [1] - 140:14
typical [1] - 107:10
typically [1] - 116:18

U

U.S [5] - 1:20, 23:16, 57:22, 58:19, 93:4
UCLA [1] - 123:13
ultimately [1] - 81:18
unable [3] - 13:7, 86:2, 172:22
unacceptable [1] - 45:23
unbelievable [3] - 144:14, 147:19, 154:24
unbelievably [1] - 144:18
uncomfortable [2] - 91:5, 91:10
unconstitutional [4] - 15:11, 47:1, 47:11, 47:13
uncovered [3] - 18:16, 18:21, 23:7
under [13] - 7:5, 7:15, 15:25, 17:11, 20:18, 29:20, 48:13, 50:12, 50:15, 55:8, 75:6, 94:5, 161:1
understood [3] - 119:3, 134:4, 183:2
undertake [1] - 147:14
undocumented [1] - 135:24
undue [1] - 10:1
unhealthy [2] - 123:2, 133:8
unified [1] - 164:21
Unified [26] - 38:15, 52:8, 54:21, 55:1, 55:11, 67:20, 71:4, 71:25, 72:4, 75:13, 81:9, 84:5, 84:12, 85:19, 86:6, 86:12, 89:20, 90:24, 91:18, 91:20, 92:16, 97:25, 126:15, 170:10, 170:15, 181:20
Uniform [1] - 180:16
unifying [2] - 24:12, 24:21
unit [2] - 164:2, 164:7
UNITED [1] - 1:1
United [2] - 99:13, 193:5
units [6] - 163:25, 164:4, 164:5, 164:6, 164:10, 165:16
universe [6] - 40:25, 41:1, 77:2, 77:3, 77:8, 77:12
university [1] - 100:9
University [2] - 2:14, 99:23
unless [4] - 53:12, 58:11, 90:2, 98:6
unreliable [2] - 77:21, 77:22
unto [2] - 94:13
unusual [1] - 150:5
up [76] - 4:13, 9:17, 9:23, 10:14, 15:3, 16:13, 20:3, 21:15, 21:21, 30:25, 31:4, 31:23, 32:19, 35:6, 37:13, 40:1, 44:20, 44:22, 44:23, 45:2, 45:13, 49:8, 53:3, 54:22, 55:6, 64:21, 64:24, 77:5, 77:9, 79:12, 83:20, 84:15, 85:25, 86:4, 92:13, 92:16, 97:10, 107:22, 110:18, 111:3, 112:12, 112:14, 112:16, 112:17, 114:20, 117:5, 117:12, 119:8, 119:12, 121:17, 124:19, 125:13, 125:14, 125:24, 127:3, 127:15, 128:7, 130:15, 131:2, 131:8, 138:3, 140:12, 141:9, 145:3, 146:16, 146:20, 148:16, 155:23, 156:17, 160:25, 161:7, 168:18, 177:8, 185:11, 192:17
upheld [6] - 81:21, 82:13, 84:3, 181:9, 182:1, 182:2
upset [2] - 92:6, 92:11
upsetting [1] - 128:5
upward [1] - 155:23
urban [1] - 177:19
urgency [2] - 111:22, 112:5
usefulness [9] - 26:12, 69:1, 69:12, 73:16, 74:3, 76:1, 171:19, 171:20, 176:19
usual [1] - 192:19
utilize [2] - 176:22, 177:1
utilized [1] - 161:18
utilizing [1] - 162:7

V

vague [1] - 79:1
vaguely [1] - 185:19
Vail [2] - 127:25, 128:4
Valenzuela [1] - 31:15
valid [4] - 51:13, 71:12, 77:6, 77:11
value [3] - 66:21, 101:11, 155:4
values [2] - 96:3, 96:4
variants [1] - 102:7
variety [7] - 45:3, 50:25, 74:1, 91:1, 92:12, 121:4, 154:22
various [5] - 127:8, 155:1, 168:12, 168:17, 187:17
verify [1] - 119:21
version [2] - 94:12, 159:5
versions [1] - 7:2
versus [2] - 143:3, 169:11
vibrancy [2] - 102:11, 103:24
vicissitudes [3] - 161:3, 161:6, 183:3
video [7] - 54:9, 59:25, 75:2, 85:10, 117:24, 118:2, 119:9
videotape [1] - 119:10
Vietnam [1] - 58:22
view [11] - 73:8, 100:14, 105:9, 105:14, 114:17, 120:9, 122:15, 122:25, 131:14, 131:22, 132:2
viewed [6] - 103:8, 114:22, 119:14, 120:8, 123:11, 176:5
viewing [1] - 120:4
viewpoint [2] - 178:4
views [6] - 25:22, 121:3, 132:10, 133:4, 133:25, 134:8
vigorous [1] - 182:12
violate [5] - 41:9, 59:5, 82:2, 91:22, 188:7
violated [8] - 81:20, 81:25, 82:5, 82:8, 82:15, 95:3, 158:12, 179:18
violates [1] - 93:24
Violation [1] - 46:25
violation [31] - 37:18, 38:10, 38:15, 39:3, 39:12, 42:5, 53:2, 56:8, 57:18, 61:1,

61:4, 61:7, 61:14, 67:11, 75:13, 83:7, 90:17, 91:14, 91:20, 91:23, 91:24, 92:2, 92:18, 93:2, 93:6, 93:19, 94:6, 98:1, 163:18, 170:15, 189:19
violations [6] - 39:7, 48:14, 49:3, 55:21, 71:22, 83:17
visit [18] - 33:24, 43:11, 43:18, 77:15, 77:17, 103:17, 112:15, 117:20, 117:25, 118:10, 118:12, 118:14, 118:15, 120:10, 130:12, 134:15, 142:11, 170:18
visited [14] - 35:20, 40:10, 43:17, 65:1, 67:23, 73:6, 74:21, 107:25, 134:12, 154:21, 170:22, 171:3, 173:10, 173:15
visiting [2] - 73:8, 74:20
visits [7] - 39:19, 72:5, 72:12, 72:18, 72:24, 90:25, 170:16
visualize [1] - 137:22
vocational [2] - 111:12, 112:18
volunteer [1] - 109:15
volunteering [3] - 109:12, 109:13, 109:16
vote [5] - 23:15, 23:20, 24:19, 25:7, 139:8
voted [9] - 6:15, 6:25, 7:1, 15:24, 23:9, 24:1, 24:18, 25:10, 25:13
voting [3] - 7:3, 24:23, 25:16
vs [1] - 1:6

W

wagging [1] - 85:21
wait [7] - 7:17, 9:16, 9:22, 14:24, 18:23, 31:18, 187:18
wake [3] - 92:13, 92:16, 177:8
wake-up [3] - 92:13, 92:16, 177:8
Wakefield [2] - 173:9,

174:7
walk [1] - 190:1
wall [6] - 130:15, 130:19, 131:2, 131:4, 131:8, 131:19
Wallace [1] - 1:13
wandering [1] - 12:22
wants [2] - 30:5, 35:15
War [1] - 58:22
war [1] - 87:1
ware [1] - 153:7
warned [1] - 21:10
Washington [4] - 2:16, 2:20, 62:13, 62:20
waste [2] - 32:15, 55:18
wasted [3] - 26:10, 125:19, 125:20
wasteland [1] - 102:12
wasting [2] - 9:10, 123:17
watch [1] - 175:9
wave [1] - 58:18
waves [1] - 127:19
ways [2] - 18:19, 123:2
wealthy [1] - 56:17
web [1] - 26:21
webinars [1] - 156:5
website [21] - 27:14, 27:17, 29:7, 34:7, 35:11, 35:20, 35:24, 36:6, 36:7, 36:17, 36:18, 36:25, 37:1, 37:7, 37:9, 47:7, 47:9, 47:24, 48:4, 48:5
websites [4] - 36:3, 36:19, 48:3, 48:8
Wednesday [1] - 31:4
week [27] - 7:9, 9:16, 9:22, 17:3, 22:18, 31:13, 31:14, 31:16, 31:17, 31:20, 31:21, 32:7, 32:17, 67:20, 72:1, 72:4, 72:5, 72:12, 72:24, 88:20, 100:23, 104:9, 105:5, 141:25, 151:13, 154:3, 164:7
weekend [1] - 192:15
weeks [3] - 5:13, 18:25, 143:10
Weil [1] - 2:3
Weinzwieg [1] - 2:22
welcome [1] - 100:2
welfare [1] - 148:4
Welfare [1] - 148:7
well-defined [1] -

161:16
well-known [2] - 113:2, 113:14
well-organized [2] - 164:25, 175:21
Wells [5] - 127:5, 145:21, 146:1, 146:4
West [1] - 1:21
Western [1] - 85:1
whatsoever [1] - 99:1
wheel [1] - 115:18
whichever [2] - 16:10, 35:15
white [6] - 58:21, 102:10, 117:17, 120:13, 121:25, 188:4
whites [1] - 110:19
whole [27] - 49:6, 50:22, 53:22, 55:2, 58:12, 59:7, 70:6, 73:16, 85:21, 85:22, 88:1, 91:1, 92:12, 104:10, 127:18, 131:18, 144:20, 145:3, 145:25, 147:24, 153:22, 154:22, 162:13, 166:8, 168:4, 175:12, 184:14
wide [1] - 175:9
wider [1] - 178:4
wife [1] - 79:13
wigs [1] - 119:17
wild [2] - 79:6, 79:8
wildfire [1] - 133:3
willing [3] - 96:10, 115:25, 123:10
willingness [1] - 151:22
window [1] - 184:25
winning [1] - 93:15
wish [1] - 100:19
withdrawing [3] - 103:20, 103:21, 118:1
withdrawn [2] - 67:2
withheld [5] - 53:25, 83:22, 83:25, 141:15, 186:11
withhold [3] - 53:8, 83:4, 186:14
withholding [6] - 52:22, 53:3, 53:11, 53:14, 83:13, 141:9
WITNESS [9] - 42:17, 47:17, 68:8, 76:18, 84:23, 188:18, 190:19, 191:11, 191:18
witness [30] - 4:4, 10:24, 29:2, 29:3, 30:11, 31:2, 31:16, 31:22, 32:4, 32:10, 32:11, 32:21, 33:7, 33:10, 35:4, 35:10, 35:12, 59:22, 63:20, 79:23, 84:22, 87:17, 130:7, 130:12, 174:7, 174:21, 186:8, 190:24, 190:25
witnessed [1] - 154:25
witnesses [8] - 4:8, 17:13, 31:12, 31:19, 66:22, 180:25, 190:23, 191:25
WITNESSES [1] - 3:3
witnessing [1] - 179:14
woman [1] - 78:8
woman's [1] - 58:24
won [1] - 33:22
Wooden [1] - 123:13
word [9] - 23:21, 40:12, 42:6, 45:8, 61:17, 64:1, 125:16, 161:5, 183:2
wording [1] - 24:2
words [5] - 27:23, 56:16, 124:20, 165:19, 189:16
works [2] - 56:9, 116:3
world [2] - 24:25, 58:18
worship [1] - 102:10
worth [1] - 66:9
wow [1] - 66:15
write [1] - 99:4
writer [1] - 100:6
writes [2] - 79:7, 79:8
writing [4] - 63:24, 70:4, 77:25, 144:18
written [3] - 22:24, 54:23, 66:10
wrote [16] - 28:1, 98:5, 98:15, 98:20, 99:1, 99:8, 100:25, 101:12, 101:17, 102:3, 102:17, 104:9, 104:13, 104:15, 104:21, 105:3

Y

Yale [2] - 107:18, 109:8
Year [1] - 92:8
year [19] - 50:1, 88:13,

92:9, 107:10,
 107:12, 107:14,
 108:8, 108:12,
 109:2, 109:15,
 112:19, 116:18,
 127:2, 127:11,
 136:17, 164:3,
 164:5, 169:23, 185:1

Years ^[2] - 61:5, 87:22

years ^[18] - 9:20, 11:6,
 18:14, 20:1, 20:10,
 22:19, 57:16, 107:5,
 107:7, 107:8,
 107:10, 112:15,
 115:11, 116:23,
 137:11, 167:22,
 171:16, 185:10

yesterday ^[10] - 6:6,
 11:5, 29:6, 33:17,
 34:5, 52:4, 65:8,
 122:10, 159:1,
 163:14

York ^[3] - 2:5, 2:12,
 148:19

young ^[4] - 107:3,
 117:15, 121:22,
 124:25

yourself ^[6] - 43:21,
 44:5, 44:9, 56:25,
 116:14, 147:14

yourselves ^[1] - 192:2

Z

Zen ^[1] - 94:10

Zip ^[1] - 106:21